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THESIS

CHAIN STORE TAXATION

by

FRANCIS JOSEPH O'BRIEN
(A.B. Boston College 1933)

submitted in partial fulfillment of
the requirements for the degree of

MASTER OF BUSINESS ADMINISTRATION

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CHAPTER I

PURPOSE OF THE THESIS

At one time I debated the question as to whether the chain store was detrimental or not, and ever since I have been interested in this large-scale retailing industry. I have always wondered about its policies and tried to understand how it could set up such a reasonable scale of prices. I understood the systems and policies of the independent store, but as hard as I tried, I could not intelligently understand the deeper problems of both industries. Now, with the knowledge of business subjects I have acquired in the last two years, I can better understand and appreciate the difficulties.

Especially the problem of chain store taxation interested me and I have made a special study of this subject. In this thesis, I will attempt to bring forth the arguments for and against chain store taxation, and the results as they are shown by the decisions of the legislatures of the different states.

In compiling the thesis, I have searched through a vast quantity of literature on the subject, and am able here to present authoritative material covering many points of view. My material, in addition to the actual chain store

taxes imposed in the different states, covers the important arguments for and against chain store taxation in general.

The chain store industry is one of our modern major trade developments. The industry has grown so fast and large within the last thirty years that today it serves many of the requirements of every class of society. However, in spite of the many advantages that the public receives from its services, many misunderstand it and are therefore set against it.

Let me indicate the importance of the chain store industry by showing what it has done. By means of its large-scale retailing methods it has brought lower prices and better quality into the retailing system. Most people living in this country today know this, and most of them have received the benefits of it. Yet there are thousands amongst them who are opposed to such an industry. Why is this?

I will show the reason for the opposition to the chain industry by relating a few facts about the origin of the anti-chain movement. When the chain store first came into existence it had no opposition. It had abundant advantages of which the consuming public took notice and reaped the benefits. But the independent merchant, thriving prosperously before the advent of the chain, now began to have difficulties, for he began to lose the trade that now went

to the chain store. With this loss and the rapid development of the chain store, naturally the independent opposed its growth. Public opinion, however, was and is both favorable and unfavorable. This makes it difficult to determine fairly the proper status of the chain. Especially is this true at the present, when state legislatures are trying to get resources for additional income, and finding the chain store an easy industry to tax, make it bear the brunt of special taxation. Many of the state legislatures are now waging lively battles on the problem of chain store taxation, and the outcome will be interesting.

CHAPTER II

WHAT ARE CHAIN STORES

CHAIN STORE DEFINED

A chain store is a form of business which carries on retail trade, each store being a part of a group of similar stores. The entire group is owned and operated by a central organization but each store retains a local manager. In fewer words, each store is one of a group of stores which are centrally administered and centrally merchandised.

DISTINGUISHED FROM INDEPENDENT STORE

The chain store industry serves millions of people throughout the country, its chief claims to distinction being low prices and good quality in its products. It can offer these advantages because of its unique large-scale retailing methods, so characteristic of it, and so uncharacteristic of the independent store.

The independent is a business owned and conducted apart from other stores. As a rule, it does not do a large-scale retailing business, as compared with a group of chain stores, for it is too small and is not organized as the chain is. Since it has not the advantages of large-scale buying and large-scale retailing, it suffers as regards competition with its rival. Its prices as a rule must be higher than

those of the chain, because it cannot buy in such large quantities and its comparative overhead is larger.

The distinction in the definition of the two industries shows that competition is a chief factor in the complaint of the independent against the chain. Taxation is the remedy needed to reduce the advantages which the chain naturally has over the independent grocer. This is why the question of taxing the chain store is so vital to it, and to its rival, the independent. The chain store can be taxed out of existence. Is it best for the buyer in the long run, that the chain store should be abolished? Of course, the independent advocates its extinction. What do the buyers' best interests demand?

CHAPTER III

THE LEGISLATIVE PROBLEM

The anti-chain store movement made rapid progress in a very short time. After the establishment and development of the chain store, much agitation and propaganda spread throughout the country. Judges, governors, councilors, senators, congressmen and other high officials took part in the new problem. Radio and newspaper alike were filled with the talk and clamor about chain store taxation. Political and other smaller organizations joined the individual retailers and conducted a strenuous attack on the independent store's rival.

At this time, anti-chain store legislation began. Every state in the country attempted to levy taxes of such exorbitant amounts that the chain would have been unable to absorb them in its current operating budgets, and would therefore have been forced to pass them on to the consumer.

Once this type of legislation got started, it spread rapidly, for in 1925, in only two states was there any chain store legislation, while in 1927 there was a total of sixteen bills introduced for taxing the chain. North Carolina, Georgia and Maryland actually enacted laws during this year.

In 1929, in twenty-four states, sixty-two anti-chain store measures were proposed; however, only two really became law. One of these new laws, the Indiana graduated tax law, has become one of the most important cases on record with reference to chain store taxes. It was declared unconstitutional by the Indiana Federal District Court. The decision handed down made doubtful the constitutionality of such legislation, and for a while checked the enactment of such tax measures. However, there was no let-down on the part of the adversaries to single out the chain store for special taxation.

In 1930, eighty tax measures were proposed which sought to levy chain store taxes. Kentucky passed a graduated gross sales tax law, and Mississippi imposed an additional tax on the gross sales of the chain store. However, the defenders of the chain store rallied around and saved the industry from being further burdened. Tax laws were also in effect in Georgia, North Carolina and South Carolina. In North Carolina and in Georgia the chain store paid graduated license fees, with the maximum fee being fifty dollars per store for all stores over five. In South Carolina the maximum fee was one hundred dollars for all stores over five. A gross sales tax law existed in both Kentucky and Mississippi. The Kentucky measure had the sales of one company's stores

grouped and levied a tax on the total sales. The rate progressed from one-twentieth of one per cent for sales of four hundred thousand or less, to one per cent of all sales over a million dollars. In Mississippi, the sales tax rate was one-fourth of one per cent on all companies operating more than five stores in the state, and was levied on chain stores in addition to the one-fourth of one per cent gross sales tax which was required.

In 1931, more than one hundred and thirty chain store tax measures were proposed, levying numerous special taxation policies. Every one of the bills was intended to be used for the purpose of raising additional money for state revenue. These tax measures were unfair and burdensome, but luckily enough, this was a happy year for the chain stores, for none of these bills became law. In the early part of this year, however, the Indiana Case was brought again to the front. As we know, this case had previously been tried and the tax law was declared to be unconstitutional. However, at this time, the Supreme Court of the United States reversed the decision previously handed down, and gave another decision declaring this graduated license tax law to be constitutional.

EXPANSION OF ANTI-CHAIN STORE LEGISLATION

New agitation arose against the chain store when the decision on the Indiana Case was reversed. Eighty-six

tax measures were proposed but only five went into effect. These new laws were in Arizona, Alabama, Florida, Louisiana and Wisconsin. The results showed that the Indiana Case did not have the effect that at first seemed apparent.

The Arizona chain store tax law was identical with the famous Indiana measure, while the Alabama, Florida, Louisiana and Wisconsin measures increased the maximum tax that was provided for in the Arizona and Indiana bills. These four cases showed the evil in the chain store legislative problem. The trend seemed to be for a continued increase of rates which was finally bound to be too burdensome, and would result in the death of the advantages served by the chain store industry.

To bear this out, the Wisconsin tax law, used as a temporary emergency measure to raise additional money for state revenue for the relief of the state unemployed, provided for a graduated license tax of ten dollars for every store up to ten, and progressed fifty dollars for every store over twenty. Louisiana's tax law provided for the paying of taxes beginning at ten dollars per store for all stores between two and five, graduating to two hundred dollars per store, for all stores over fifty. The new Alabama tax law imposed a seventy-five dollar maximum for every store over twenty. Florida increased the maximum tax of chain tax measures were proposed but only five went into effect. These new laws were in Arizona, Alabama, Florida, Louisiana and Wisconsin. The results showed that the Indiana Case did not have the effect that at first seemed apparent.

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With the passing of the Indiana case, the different states planned their laws after it so as to get favorable results, but more punitive provisions were used in most of them which were very burdensome and destructive to the chain store industry. It is now apparent that no chain store, no matter how efficiently it operates, can absorb a tax of a thousand dollars for every store over five, or even a thousand dollars for each store over twenty, without being forced to raise its prices and thus reduce the customer's benefits.

During 1932, another tax problem showed on the horizon. The city ordinance measures provided for the classification of the chain store for special taxation. This new form of chain store taxation was first introduced in Palatha, Florida and Portland, Oregon. Palatha put into effect an ordinance binding all business men to pay a two per

cent gross sales tax. The independent and the chain fought this movement and brought about its defeat. However, within a short time, Jacksonville, Orlando and Palm Beach did likewise in adopting such measures. In Oregon there was an ordinance which included the licensing of retail stores, starting at five dollars for every store over twenty operating in the city. This new type of chain store taxation soon spread to other parts of the country.

A city in Michigan put into effect an ordinance levying a graduated license tax with a maximum of one thousand dollars for every store over three. In the Middle Western cities, similar city ordinances were attempted. In St. Louis, a chain store ordinance was put into effect levying a graduated license tax, starting at twenty-five dollars for every store between two and five, and progressing to two hundred and fifty dollars for every unit over twenty-five. Newark, Charlotte and Pittsburg later tried to levy special taxes on the chain store, but only Durham and Charlotte enacted city ordinances along similar lines. A city in New Jersey put into effect a measure binding the chain store to pay a graduated license tax of fifty dollars per store for all stores over five.

In 1932, several cities had a difficult task to pass city ordinances, and the only measures in effect were

those in Durham, Charlotte and St. Louis. However, this form of taxation will certainly lead to something further, and it is only a matter of time before another type of destructive legislation will show itself.

CHAPTER IV

ARGUMENTS IN FAVOR OF CHAIN STORE TAXATION

Tax the chain store! This is the cry of those people who are in opposition to it, and who would like to remove some of the advantages of the industry by burdening it with such a weight. Also included in this group, are those who see in the chain store a lucrative field for income for the state.

Many arguments are given by the adversaries of the chain store to support their stand. They claim that any system which deals a death blow to small merchants, whose price cutting is harmful to the public, which only undersells independents because of bad trade practices, and has a bad influence on a community, should be taxed, for it is for the best interests of the state and public to do so. They also attempt to prove that the chain store is monopolistic, its policies demand low wages, its price concessions demoralize manufacturers' business and it drains the community of resources.

Obviously no chain company, no matter how efficiently it operates, can absorb a large tax, say for example, a tax of a thousand dollars for every store, without being forced to raise its retail prices substantially. This is

exactly what the proponents of chain store taxation have in mind, and this is why so many legislatures are passing laws, or considering taxation laws against the welfare of the chain store. It is too difficult for the independent to compete successfully against the chain store today, and something must be done to protect the individual retailer.

CHAIN STORES DEAL A DEATH BLOW TO SMALL MERCHANTS

"The recent rapid mortality rate among long-established wholesale dry goods houses, which a few years ago were thought to be beyond reach of adversity, is known to everyone. The tendency and, in many instances, the necessity for many manufacturers of advertised lines to sell direct, speeded their passing and the growth of the chains imparted the final blow."(1)

"Great corporations have been organized to establish chain stores and by unfair competition and unjust devices, to put out of business thousands of independent grocers, butchers, and retailers. Thousands of formerly independent dealers are walking in the streets in search of employment."(2)

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(1) Emil Brisacher, President, Emil Brisacher and Staff, (Advertising Agency), Printers' Ink, March 27, 1930, p. 6.

(2) Senator Reed, Interstate Grocer, June 14, 1930, p. 1.

"In the past few years more than three thousand independent merchants have been put out of business by chain stores owned and operated from Wall Street. As a result of this condition the smaller communities of this state are facing a crisis."(1)

"About four years ago some grocery men in Louisville, Kentucky, became alarmed at the number of grocers who failed. They decided to find out first how many suffered this doom. And so for three years they kept a careful tabulation of all grocers who closed up shop. What they found dumbfounded them. Louisville had less than one thousand grocery stores. Of this number about eight hundred are independent stores. And though there are but eight hundred independent stores in the town, in three years one thousand eighty-two such merchants went out of business."(2)

"Louisville, Kentucky, affords a typical example of what has been happening. I have recently made a survey of the retail establishments on the main shopping thoroughfare of Louisville. I have found that from eighty-five to ninety per cent of the retail business done on this thoroughfare is done by chain stores. Five years ago the condition

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(1) Senator Thomas D. Schall, Interstate Grocer, May 24, 1930, p. 2.
(2) John T. Flynn, Colliers, September 28, 1929, p. 12.

was exactly the opposite, with eighty-five to ninety per cent of the business carried on by locally owned establishments."(1)

These facts seem to show us that the small merchant is now at a disadvantage and should be protected. How can this advantage of the chain store be removed or somewhat lessened? Would not taxation of the chains be of some help?

CHAIN STORE PRICE CUTTING IS UNFAIR AND HARMFUL

The Federal Trade Commission in a unanimous report to Congress some years ago stated: "The consuming public does not enjoy benefits by unfair price cutting to compensate it for the injuries following demoralization caused by price cutting. In the long run, unrestrained price cutting tends to impair, if not to destroy, the production and distribution of articles desirable to the public."(2)

"The competition developed by the price cutting methods of certain retailers is harmful to the manufacturer, destructive to the legitimate dealer and of no lasting benefit to the small portion of the public temporarily affected by it."(3)

"A compilation of prices charged for similar articles by units of the same chain store corporations in various

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(1) Harry Schacter, Nation, May 7, 1930, p. 544.
(2) Truth, April, 1930, p. 2.
(3) Thomas A. Edison, Interstate Grocer, December 14, 1929, p. 2.

markets was made a few years ago by the National Association of Retail Grocers and filed with the Federal Trade Commission because of the wide differences shown by this survey in prices charged by the same chain store systems in different markets, not justified by fundamental costs."(1)

We ourselves know that price cutting has a downward influence. We know that if the quality of the article affected is not lowered, other brands of a lower quality are brought out in competition with it. Eventually these inferior brands may dominate the trade, and the general standard of that class of merchandise becomes much lower. Thus the public suffers, and the independent is at a disadvantage. Yet the chain store is allowed to make greater profits by using unfair tactics. Why not tax it, and thus make it pay for its benefits?

CHAIN STORES APPEAR TO UNDERSELL INDEPENDENTS BECAUSE OF CERTAIN BAD TRADE PRACTICES

Why should any business be allowed to reap profit by using unfair methods? The advantage the chain store derives from such actions is ruinous to the public, and to the small merchant who has not the freedom to make a living that should be allowed him. The state and government should tax such a chain that undersells the independent and forces it out of business.

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(1) America--Chained or Unchained, p. 11.

"Articles have been sold at suicide prices to get customers into stores. Immense buying power of large organizations has been used to club the manufacturer into ruinous price concessions. There have been cases of rebates returned from manufacturers to chains."(1)

"I have a letter issued by one of the large chains chiding managers who sell 'specials' because they show a low profit, arguing that stores selling them instead of regular-priced articles, coffee, tea, and candy, show it in the small profits that are realized in such stores. The letter then tells how cut prices are offered to attract customers and that it does no good to sell specials from a profit standpoint. That is a most frank admission that the low prices are merely a cloak to get the people into the store and then make a big profit selling something else."(2)

"The Chief Food Inspector of Georgia recently discovered on having complaints made to him, that chain stores in Georgia were selling a can of coffee, manufactured by the Check-Neal Coffee Company of Nashville, Tennessee, that the average buyer would, at a casual glance, suppose to contain one full pound--16 ounces.

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(1) The Business Week, April 9, 1930, p. 24.

(2) George J. Schulte, The Chain Store Menace, p. 12.

"It was being sold upon the usual 'catch sucker' appeal of a few cents less than the nationally advertised retail price per pound. But examination disclosed that it was not a full pound. It was fourteen ounces. The actual net weight appears to have been printed in very small type down at the bottom where few would see it."(1)

"The Campbell Company changed its can of beans from one pound, one and three quarter ounces, to a one pound size. The chains naturally grabbed at this, and seeing there was an advantage were quick to advertise the smaller size at a lower price, whereas the rest of the trade had the larger size. Retailers and wholesalers were led to believe the chains were simply slaughtering below cost, whereas they were making a profit, but the consumer did not know the contents of the containers were less."(2)

"In one A & P store in Michigan, ninety-eight out of one hundred eighteen packages examined were found short in weight. This manager was caught napping when Fred L. Cogswell, representative of the Michigan Department of Agriculture, entered his store and began weighing the packaged goods. One hundred and eighteen were weighed by the

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(1) Editorial, Truth, June, 1930, p. 4.
(2) George J. Schulte, Interstate Grocer, February 8, 1930, p. 1.

official and only twenty found correct, ninety-eight being short in weight."(1)

"An examination of the files of the City Clerk of Kalamazoo, Michigan, shows that in one month, from November twenty-fifth to December twenty-fifth, 1929, eleven cases of short weight were reported by the City Sealer. Seven Kroger stores, three A & P, and one National Grocery were involved in these reports and they covered beans, rice, sugar, coffee, lard, oleo, butter, berries and potatoes. Similar inspections were made in home-owned stores and not one was reported short in weight."(2)

Ex-Governor H. P. Long of Louisiana once said that the chain stores have been convicted of almost everything in regards to short weights. They use scales, he said, which are open to question and subject to trickery. They sell beans and other things which are short in weight.

Should not such a system, guilty of malpractices in its trade, be taxed?

CHAIN STORES HAVE A BAD INFLUENCE ON COMMUNITY

Let me indicate what the shifting of the merchandising from the hands of local men into the hands of outside

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(1) George J. Schulte, Interstate Grocer, February 8, 1930, p. 1.
(2) Interstate Grocer, March 22, 1930, p. 2.

capital means to the community at large. The local merchant generally owns his own home, and the town in which he secures a livelihood for his family is his permanent home. He takes pride in the activities of his community, and he shows an active interest in the education and training of the youth of the town. He is considered one of the leading citizens and is expected to lend his efforts toward the social, educational and religious advancement of the community. As this loyal and energetic type of citizen is being driven out of his prominent position, another type of merchant takes his place.

The new man is a transient. He is merely a representative of a non-resident group of stockholders, who pay him according to his ability to make profit for them. He can hardly be classed as a merchant, for he is told what to do and how to do it, and does his best to carry out his orders. The better able he is to carry them out, the better are his chances of being transferred to a bigger town, which is his chief ambition. On the other hand, if he is not good at taking orders, he is likely to be demoted or moved to a smaller town at a decrease in salary.

J. Frank Grimes, President of the Interstate Grocers Association, says: "Probably no informed and thinking individual will deny that our national well-being hinges

largely on the prosperity of the thousands of smaller cities and villages scattered across the nation. In the great majority of these places, retailing and wholesaling make up the larger part of business. In many communities retailing is the only business to be found."(1)

The late Senator Frank B. Willis, in an address made on March 10, 1928, in Columbus, Ohio, made the following statement: "Chain stores are having their effect on the small business men. There is no longer the incentive for a young man to enter business for himself, because if he does he is soon brought face to face with a condition in which he is compelled to face business destruction or else sell out to the chain stores."(2)

From the Interstate Grocer of June 14, 1930 we read: "The smaller cities are rapidly becoming only the homes of the employees and agents. Main Street is becoming a succession of chain stores and filling stations, all of which are duplicated in every other town in color scheme, architectural design and goods on their shelves."(3)

In the Wholesale Grocer News of January, 1930, we read: "America will not countenance the destruction of

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(1) Interstate Grocer, April 12, 1930, p. 8.
(2) Truth, March 14, 1928, p. 19.
(3) Interstate Grocer, June 14, 1930, p. 2.

individual opportunity. The retail business offers the greatest number of opportunities for men with small capital to get into business for themselves. The retail business has been the great training ground where most of our great captains of industry gained that needed executive training--in shouldering responsibility--in finance--in directing others. Should this great American institution be permitted to die and should it be changed from a nation of proprietors to a nation of clerks?"(1)

"A manager with a family of two or three children would be hard put to it to exist on the small salary received. He could not pay much rent, hence property values would have to drop appreciably. He would have to buy just ordinary things for his family and himself. His children could not go through high school as their help would be needed to ease up on home expenses. He could not lay anything aside for a rainy day or sickness and could not build a competency to take care of his requirements in old age."(2)

CHAIN STORES ARE MONOPOLISTIC

There are certain points of economy and efficiency in the chain store organization which give it distinct advantages over the wholesale and retail business as now

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(1) Wholesale Grocer News, 4:42, January, 1930.
(2) Chain Store Menace, p. 8.

organized. It sometimes controls the product from producer to consumer, buys in large quantities at a lower price, and undersells its competitors on some things. It actually has monopolistic tendencies.

The public has no direct interest in business as now organized, except to buy where it can buy the cheapest. It is short-sighted and does not see the future when the chain shall have destroyed its competitors. Neither does it foresee the watered stocks, the orgy of stock gambling upon the credit of its own savings, and the inevitable rise in price to the extortionate level. The public does not see it, but this is the universal history of monopoly. Are we going to let such action go unchecked? Can we not stop it in some way, or at least its advantages? Will not the taxation of chain stores reduce some of this monopolistic tendency?

Senator Smith W. Brookhart of Iowa, in his address before the Institute of Public Affairs of Virginia, July, 1931, said: "The growth of the chain store is perhaps the most startling development of monopoly in our country at the present moment. In 1921, four per cent of all sales were by chain stores. At the beginning of 1928, the sales were sixteen per cent or an increase of three hundred per cent in six years. In 1920, when the Packers Consent Decree was

entered, there were twenty-seven thousand chain stores in the United States. Last year there were seventy thousand and, through the current year, they have been growing at an accelerated pace. About the time of the decree, chain stores--food stores principally--did a business of seven hundred million a year. In 1927 their business amounted to three billion dollars, a three hundred seventy per cent increase. The mail order business has carved off another large slice from the local merchant and the automobile has taken his customers to the chains in the big cities. An expert has estimated that all of these causes have taken away more than fifty per cent of the business of the local merchant. I do not quote this as an authentic figure, but I do know that it is sending the local merchant into bankruptcy and destroying the civic life of the small communities. Much of this is caused, doubtlessly, by unfair and illegal practices of the big chains. The investigation by the Federal Trade Commission will bring out the facts. I know an instance where a great chain store was buying the whole output of a typewriter factory. It continued until the factory had lost all of its other customers. It then suddenly ceased its orders and the factory went into bankruptcy. The chain store then bought the factory for a song

and thus added a story to its great structure of so-called efficiency."(1)

"I predict right now that the minute the chain store succeeds in driving out the independent stores, the same minute competition between the chain stores will cease and a merger will follow immediately."(2)

Senator George W. Norris of Nebraska said, "If this combination idea is to go on much longer there will not be a man in the United States, from farming to manufacturing, who will not be working for somebody else, taking commands from the man who sits at the head of a monopoly, with his feet upon a mahogany table, giving orders to the peasant and the hired men who work in the factories and even those who work in the professional office.

"When the corner grocer is eliminated and the grocery supply is sold by companies owning thousands of stores, and through combination a single company controls the sale of food supplies in a large area, how will the consumer fare? Will not the chain store with its ability to teter up and down prices according to what it wants to do to any community--will it not have all the elements of the most obnoxious monopoly?"(3)

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(1) Address of Senator Brookhart, July, 1931.
(2) Congressman LaGuardia of New York, Interstate Grocer, April 5, 1930, p. 8.
(3) Outlook, 115:154, January 24, 1917.

INDEPENDENT MERCHANTS HELP PEOPLE IN NEED--CHAIN STORES DO NOT

It is a well-known fact that people go to their independent grocer for help. Many a time has he been put at a disadvantage by his aiding of customers, and still he continues to help them. Is not this a tax on the local merchant?

Will the chain store help the family in need? Certainly not, for it is not its policy to extend credit to customers. It is in business to make a profit, and any loss resulting from such aid given to a customer comes from the local manager's pocket, who, by such a decree handed down from the "boss", has become hardened to such help. When we look at this phase of the situation, does it not seem socially wise to tax the chain store?

J. C. Penney, in an editorial in the Saturday Evening Post, says: "It is said in the factory towns that the wage earners buy at the chains when they have cash and run up bills at the independents when they are out of work."(1)

"At some unexpected time we may get out of work and have sickness in our families; then what are we going to do? If we spend our cash with the chain stores and mail order houses while we are in good health and able to work,

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(1) J. C. Penney, Saturday Evening Post, 202:10, February 22, 1930.

how can we expect the Old Home Merchants to take care of us while we are down and out?

"There is nothing on earth that is greater than a true friend; one that will come to your rescue when you are in trouble and need; but, will the chain stores come to your assistance without you having the money at hand to put out for everything they give? If you think we are wrong, try to buy a week's supply of groceries or get a dress or a coat on time and see if you get it."(1)

"Take the case of John Smith who is taken ill. He has a wife and five children depending on him for support. The family income stops and he desires credit from the retailer pending his return to health and employment. Based on his record of honesty and payment, the merchant extends the credit and John Smith is tided over his adverse days."(2)

CHAIN STORES DRAIN COMMUNITY OF RESOURCES

The profits that are made in the ordinary course of the year in communities and towns are taken from these districts by the operating chain store. The money is spent by the homesfolk, and the profit resulting should be spent in the community, or at least it should be used so as to

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(1) Beaufort Gazette, March 13, 1930, p. 1.
(2) Representative Culken of New York, Interstate Grocer, June 7, 1930, p. 2.

cause no harm. The money that is made by the chain is sent out of the community in which it is made, thus decreasing the value of the property valuation. The money which remains in the community builds up and increases the valuation of property, and decreases the burden on those who have the weight of tax upon them. This tax burden should be shared by the chain store, for it is the one that is doing the harm to the community. The income-bearing wealth of the United States is concentrated in a few states. This is not right and anything causing such a result should be removed. Well, you can look to the chain store for its share in sending the wealth out of the community and concentrating it in a few special districts. What is to be done about it?

Senator Gerald P. Nye of North Dakota has said: "The chain system is completely wrecking our present economic set up; more particularly is it affecting community life in the United States. Whereas, profits accumulated by stores and banks in communities in the past have been largely reinvested in the community in which they were earned, we find the chain plan diverting in large part, these profits into centralized coffers. Such a program can eventually accomplish nothing short of the complete wrecking of community life in America. It causes one to ask where the funds are

coming from with which to continue the improvement of schools and the rights in rural America."(1)

"Conditions have changed during recent years. The income from the fields and from the stores no longer remains at home. Chain stores and mail order houses pick up profits in villages and country places to be taxed at the headquarters office in a far away place. The profits made by manufacturing establishments in their branch factories throughout the states and the profits from local utility concerns owned by outside capital, as well as profits from the mines and farms, are flowing in ever-increasing streams into certain centers."(2)

Edward E. Browne, Congressman from Wisconsin, has said: "The United States Treasury, through its income division, tells us that one-third of the income-bearing wealth of the United States is in one state, the State of New York; that there is one-half of the income-bearing wealth in four states and three-fourths in eight states. These figures prove conclusively that the wealth of the United States is fast moving into a very small section of the country, no longer to be used in the places where it is produced, and

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(1) Senator Gerald P. Nye, Truth, April, 1930, p. 1.
(2) Secretary Crabtree, Journal of the National Education Association, November, 1929, p. 274.

not even liable for taxation for any of the necessary activities of the various localities."(1)

CHAIN STORE POLICIES DEMAND LOW WAGES

The policies of the chain industry create a demand for low wages not only in its own stores, but in the shops of the manufacturers with whom it deals. How is this determined? The buying method of the chains is such that it makes little headway for progress to show itself and leaves such small profit for the manufacturer that the low wage policy seems necessary. So we can see that the evils of the chain affect other companies also. Should not such conditions be remedied? Would it not be a good policy to put a burden on the chain store owners? Why wouldn't taxation of the chain be of some help to a community?

"Only recently the officials of the State of New York felt it necessary to intervene because of the close and hard buying methods of various chains in the clothing business which threatened to wipe out all of the humanitarian progress which had been made in recent years in the abolition of sweat shops."(2)

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(1) Edward E. Browne, Congressman from Wisconsin, Interstate Grocer, June 14, 1930, p. 2.

(2) National Wholesale Grocers' Association, America--Chained or Unchained, p. 5.

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(1) Edward E. Browne, Congressman from Wisconsin, _Interstate Grocer_, June 14, 1930, p. 2.
(2) National Wholesale Grocers' Association, _America--Chained or Unchained_, p. 5.

"The chain store buyer goes to the manufacturer of a standard article and makes him a proposition to take a large portion of his output at low prices. He drives a hard bargain with the manufacturer, and he, like all mortals, thinks of himself first and passes on the decrease in price to his workmen.

"The chain store systems also encourage sweat shop manufacturing because of encouraging the distribution of cheap merchandise. This invariably leads to unhealthy working conditions."(1)

CHAIN STORES DODGE A JUST SHARE OF TAXES

The chain store claims that the rent it pays is a form of taxation. It claims that, today, its rent is much larger than that formerly paid by the independent who occupied the same location, and larger also, than the rent now being paid by the adjoining independents.

The chain store industry will not enter a district unless it can get the situation it wants. It is willing to pay higher rent that others for the best location if long time leases are available. By receiving long time leases it can afford to take a loss in any store the first few years on the chance of increased business. In Roxbury, not so

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(1) Interstate Grocer, June 7, 1930, p. 2.

long ago, a grocery chain forced an independent store out of a desirable location, by offering the landlord an increase in rent of one hundred twenty-five dollars per month for ten years. The independent could not match this offer and so he was forced to vacate in favor of the chain. Is this fair?

City taxes have not always been properly adjusted to the chain store. In some towns the merchants complained they were being taxed on their stock, while the chain store, the more prosperous of the two, was exempt, except for the state corporation tax. Just think how much more the local merchant was contributing to the expenses of the city or town than the chain store was!

Likewise, under the present system of taxation, the chain store does not pay a fair share of taxes for the support of education and other civic endeavors. It has nothing to do with community affairs, and will always dodge the support of any of their functions unless it will increase its profit or business. Shouldn't there be a tax on such an organization? The problem of taxation is hard to fix, but in this case there can easily be seen the relation of the independent's burden to the burden of the chain store. When this relation is understood and passed on, can we not make this ratio more even by taxation?

"The chain stores bring practically nothing into any community except what they pay for rent on the premises occupied by them and that cannot be considered a contribution to the community for the reason that if these premises were not rented to chain stores, they probably would be rented to somebody more intimately related to the community."(1)

"They do not, under the current system of taxation, pay a fair share of taxes for support of schools and like civic endeavors. Very naturally, their voluntary contributions to church ministries or local charities amount to little or nothing. They are not prompted by community motives, are not affected by community interests. They reap and gather where they have not sown. They are parasitic; prey upon citizens who endure the strains, bear the burdens and meet the responsibilities of community life."(2)

"In a number of cities it has been discovered that one single grocer pays more taxes than all the chains in the town combined. In Zanesville, Ohio, for illustration, W. T. Madden, grocer, pays ninety-seven dollars and eighty-six cents for taxes on his store and seven hundred eighty-three dollars on real estate, whereas five A & P stores, thirteen Kroger Stores and ten United Stores, twenty-eight of them,

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(1) Truth, June, 1930, p. 1.
(2) Truth, April, 1930, p. 1.

pay a total of seven hundred twenty-nine dollars. This is one hundred sixteen dollars less than the one home grocer.

"In Zanesville, Ohio, the average paid per store by A & P is twenty-three dollars and eighty-five cents per year; Kroger pays twenty-one eighty-five; and United Stores pays thirty-seven dollars and twenty-three cents. The average for all twenty-eight stores is twenty-eight dollars and ninety cents. On the other hand, the average paid by the retail grocers in that city is seventy-five dollars and twenty-one cents per store, or practically three times as much with average sales or perhaps one-half of that enjoyed by the chain systems operating in the same city."(1)

OPERATING EXPENSES OF INDEPENDENT AND CHAIN STORES DO NOT VARY MUCH

The ordinary grocery store, where the proprietor and some member of his family work early and late, and where the rent is low, can easily keep the expenses as low as those of the chain store. The independent store gives credit and other services which the chain does not give, and even this expense is so small as to be almost negligible. A smartly managed independent store can be run as efficiently as any chain, and even more so, since there is the personal

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(1) Interstate Grocer, June 7, 1930, p. 5.

tinge to this kind of management. Of course, a poorly managed independent store will not last long in this world of competition today, but there are also many chain stores which are poorly located and poorly managed, reducing the efficiency, and increasing the expenses of the chain industry.

Paul Nystrom says, "Practically any set of chain store costs covering any system of service can be matched or even beaten by independent stores operating in a similar way giving the same service.

"In independent drug stores costs range from seventeen per cent to forty-three per cent, with an average of thirty per cent. Chain store costs are said to be about the same as the average for the independents.

"Independent shoe store costs run from fourteen per cent to thirty-six per cent, with an average of twenty-four per cent, and chain store costs operating under similar conditions average about the same.

"The Harvard Bureau of Business Research figures for general merchandise stores show costs ranging from ten per cent to thirty per cent, but with an average or common figure of fifteen and one-half per cent. Chain store expenses in this field are about the same.

"There is scarcely a retailer so small that he does not deal with producers directly for some goods.

Independent grocers, even the small ones, buy much of their goods from manufacturers and producers. Hence adding the wholesale expense margin to the entire sales of the independent's business would be obviously unfair.

"Considering that chain stores usually do not offer credit, deliveries and other similar services, the costs of selling through independent stores, even with the wholesale margin included, differences in service considered, closely approximate, indeed if they do not fall below, the costs of selling in chain stores."(1)

"Our retailers, on the average, have reduced cost of operations from a minimum of seventeen per cent of sales down to less than eleven per cent; some down to six and seven per cent. We have every reason to believe that the average will soon be well under ten per cent."(2)

CHAIN STORE PRICE CONCESSIONS DEMORALIZE MANUFACTURERS' BUSINESS

The chain store buys one order from the manufacturer, then another, and so on, finally ending up by buying all the orders. The manufacturer has now no other buyers since he is satisfied with his one big customer. But the

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(1) Paul Nystrom, Chain Stores, p. 8.
(2) J. Frank Grimes, President, I.G.A., Wholesale Grocer News, 4:24, April, 1930.

chain store puts on pressure and the price is reduced. The manufacturer is now controlled and he must either lower the price or go out of business. If he lowers the price, his profit will dwindle, and the end will be in sight for such a poor unfortunate. Yet, look at the profit the chain store is making from such dealings. Wouldn't it be of some help to tax the chain store and reduce its advantages?

"The present demoralized condition of America's overall, workshirt and work-glove manufacturer can be laid right at the doors of the chain stores, who have and are consistently using these commodities for price leaders that impress the gullible public as representing the wonderful values that can be found throughout their stocks. The prices at which the chains retail these items are, in many instances, below the manufacturers' production costs. It is no consolation that as a rule the other items in the chains' stocks are on the whole priced as high or higher than the independent store averages. The public's buying judgment is blinded by the low price of the leaders."(1)

"The reason for private brands, owned by a chain store corporation, is both a larger profit and to avoid price comparison with advertised brands put out by many

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(1) Printers' Ink, March 27, 1930, p. 6.

manufacturers. Having their own brands, it will be possible to make the housewives buy what they have. By virtue of this domination the forty-five thousand manufacturers over this country would be at the mercy of the chain store corporations. There were seventeen thousand less food manufacturers in 1927 than in 1922. These forty-five thousand manufacturers are scattered all over the United States. Many of them are in small towns and give work to many people. These factories are assets of such cities but they would have little chance with the chain stores; with independent dealers they have a market and an opportunity to build."(1)

"There is no denying that our manufacturing industries would languish if any appreciable number of manufacturers were compelled to distribute entirely through chain and mail-order systems. Even the largest consolidations of producers require the open channel independent distribution for their healthy operation."(2)

WHOLESALE AND MANUFACTURING EXPENSES OF CHAIN AND INDEPENDENT ARE SAME

When we have examined thoroughly the expenses of the chain store and the independent grocer, we find that there is not any noticeable difference in them. Any advantage the

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(1) The Chain Store Menace, p. 11.
(2) Nation's Business, 17:23, March, 1929.

chain gets by large-scale buying is taken up by the costs of maintaining warehouses and the redistribution process. In some cases, taking over the function of the wholesaler will reap profits for the receiver, but this does not always effect the savings that were anticipated. For many years, and even at present, the margin of profit in the wholesale trade has been very small. Some wholesalers have tried several different products, but the expenses were so great and the profit so small, that they ended up with nothing at all.

Paul Nystrom says, "A chain store that buys direct and handles large quantities of goods incurs new expenditures for warehousing, handling, stock-keeping, transportation, depreciation, et cetera. Quantity buying resulting in securing the lowest prices almost invariably results in increasing operating expenses.

"The independent wholesale grocery field is big enough to require capital, expensive buildings and equipment and a large force of office men, warehouse handlers, shippers, deliverers, and all these functions performed by a wholesale house cannot be dispensed with under any other distributive system nor can they be performed at as little cost by any other known agency."(1)

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(1) Wholesale Grocer News, 4:23, April, 1930.

"Although the records of the I.G.A. are brief, they establish some surprising facts. As an instance, they prove that an intelligently managed wholesale grocery house can furnish a distributive service that is no more costly than the performance of the wholesale function by the chains, when it is given an equal opportunity with the chains in buying and when its retail customers are organized to concentrate their purchases."(1)

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(1) Nation's Business, 17:136, April, 1926.

CHAPTER V

ARGUMENTS AGAINST CHAIN STORE TAXATION

The chain store should not be taxed! This is the claim of those who are in favor of the continued life of the chain store. It is the cry of those who see in this type of business many benefits to the consumer.

People who are against chain store taxation say that the chain industry should not be taxed for: its prices are lower than those of the independent; it has a quicker turnover than other stores; it has a good influence on a community; it lowers the cost of advertising; it does not practice harmful price cutting; it has not dealt a death blow to small merchants; the public shows its approval by patronizing it.

Defenders of the chain store claim that certain advantages of its operations may be lost, if the industry is regulated along the lines of state activities, namely, taxation. Under this form of taxation control there would be a substantial addition to the cost of living, and people who wish to save by the cash and carry method would lose that advantage, and the savings of such a system would be frustrated.

CHAIN STORE PRICES ARE LOWER THAN INDEPENDENT'S

A few years ago the chain store and the independent bought merchandise at the same price and on the same terms. Both normally received a profit of 20% on their sales. Today, with the added advantage that the chain store has, in getting merchandise at a lower price as a result of large-scale buying, it can still make its profit of 20% and sell goods at a lower price than can the independent.

The chain store has the advantage of not having to buy through the wholesaler and retailer as the independent does, and the savings which result give it an added superiority. The economies effected by this chain store distribution are of great significance.

"In one of a series of marketing analyses of the United States Department of Agriculture and the Port of New York Authority, a study was made of retail prices of certain fruits and vegetables in different types of stores. Retail prices in chain stores were found to average seventeen per cent below those prevailing in typical independent stores which gave the prevailing amount of service. Prices in the strictly cash and carry chain store averaged thirteen per cent below the cash and carry independent store. This study was made during 1923 and 1924, and it is reasonable

to suppose that chains have learned how to effect even greater advantages since then."(1)

"Here is a large chain grocery company which makes its annual report public. Its figures run into the millions, but I reduce them in order to simplify them. The merchandise which this company buys for $82.50 it sells to the ultimate consumer for $100. It uses up $17.50 in all wholesale and retail expenses and in profits.

"Now let us look at a wholesaler. If he buys as cheaply as the chain, he, too, pays $82.50 for the same merchandise. He now sells to the retail grocer this merchandise for $92.42. The retailer in turn sells it to his customers for $115.52--the same goods which the chain sold for $100."(2)

"The average savings on various groups of products when they are purchased at a chain store are:

21.96% is the average saving on 5 soaps.
12.43% is the average saving on 10 breakfast foods.
8.99% is the average saving on 8 beverages.
9.54% is the average saving on 3 canned fruits.
20.74% is the average saving on 3 cleaners.

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(1) Rebekah Hoffman, Chain Store Progress, July, 1930, p. 5.

(2) John T. Flynn, Colliers, September 28, 1929, p. 67.

13.98% is the average saving on 10 products used in the preparation of foods before they are cooked.

15.78% is the average saving on deserts or materials used in deserts."(1)

Why should the chain store be taxed when it gives such advantages and bargains to the consuming public? Is the industry not burdened enough with its low price policy?

What, indeed, would be the effect in the end if the chain store was taxed heavily? There would be more money in the state and federal government treasuries, but the public would have to pay higher prices for the goods, and as a result they themselves would be taxed.

THE QUALITY OF MERCHANDISE IS THE SAME AS INDEPENDENTS

The patrons of the chain store are consumers who belong to all classes. As a matter of fact, however, the greatest percentage of the chain store consumers are from the poorer class. Good business management and knowledge shows that success depends on approval, confidence and patronage of its public. How can this industry afford not to have the best in quality? It is demanded, and must be supplied in order for the chain to be successful.

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(1) Harvard Business Review, July, 1930, p. 422.

A study of the Kroger Baking Company will give one a good idea of the quality of goods sold by the chain store. I was surprised, myself, to find that a Kroger Food Foundation has been recently established. It has a large laboratory and research bureau, which is used to assure the consumer of the highest quality in food products.

There have been rumors spread about that the chain covers up the quality of the goods by having different sized packages of the same product that is sold exclusively by it. I, myself, am unaware of such a practice.

M. G. Shaggs, President of the Safeway Company, says, "These advertised brands are of exactly the same quality as those handled by anyone else and in the same sort of containers. It happens that manufacturers sometimes change their packages or containers from one content to another as to quantity. When such changes occur, it is entirely natural that Safeway, because of its more rapid turnover of stocks, will be among the first to offer the new package. This explains why it sometimes happens that there is a difference between certain items found in Safeway Stores and those found in individually operated stores."(1)

"A number of inquiries have been addressed to our company (Gold Dust Corp.) asking if we are marketing

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(1) Printers' Ink, June 19, 1930, p. 104.

two different weight packages, one for independent stores and one for chain stores. For the information of all concerned we are glad to advise the packing of Gold Dust, or any other of our products, is the same for chains as it is for independents, namely:

2 lb. 4 oz.-------------	Gold Dust	121 large
6 oz.-------------	Gold Dust	10015 C

This packing has been the only sizes since we discontinued our 2 lb. 10 oz. large package and 7 oz. small package quite some time ago. It is possible that some of the old packages are still on the market."(1)

THE PUBLIC SHOWS ITS APPROVAL BY THE WAY IT PATRONIZES THEM

The public is patronizing the chain store much more than it is patronizing the independent. Every year the percentage of people who patronize the chain store is becoming greater and greater. To demonstrate or prove this point we do not need to quote figures or findings of experts on the subject. We can see for ourselves that the people are becoming fewer and fewer who trade with their neighborhood grocer. What does this prove? Nothing other than that the public approves of the chain store and that it is strongly and wisely opposed to burdensome taxation of this industry.

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(1) A. J. Kaufer, Chain Store Progress, May, 1930, p. 3.

"Let us imagine a town which has two hundred and eight grocery stores. Of these, forty-three are chain stores and one hundred sixty-five are independents. Thus the independents outnumber the chains four to one. But let us look a little closer. Those chains did forty-one per cent of the business. In other words, each chain store did as much as three independents."(1)

"In the country as a whole there are about four hundred thirty thousand grocery stores. Only seventy thousand of them are chain stores, but these seventy thousand do half as much business as the remaining three hundred sixty thousand independents combined."(2)

CHAIN STORES HAVE A QUICKER TURNOVER THAN OTHER STORES

It is a well-known fact that the chain store sells its products much cheaper than the independent. It can do this because it operates cheaper, more economically, and because the stock turnover is more rapid.

An observant citizen can notice the large shipments of goods that are brought to the chain store regularly. He can look at the shelves, from week to week, and notice the quick turnover of the stock. He can also visit the corner grocery store and see the large stock that has been there for

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(1) John T. Flynn, Colliers, September 28, 1929, p. 12.
(2) John T. Flynn, Colliers, March 30, 1929, p. 54.

months and in some cases for years, for the policy of buying products which are not nationally known makes the independent store stock slow moving.

This is only one more point that demonstrates why the chain store should not be taxed, for the prices of its products would be affected, and the turnover of the goods in the stores would be greatly lessened.

"The many unnecessary moves made by goods on their way to the consumer have exaggerated the cost of merchandising. But strangely enough, one of the costliest elements had been not the moves but the pauses. After the goods got to the old-fashioned retail merchant they remained with him too long. He put money into his stock and let it rest there for months. When a merchant buys a dollar's worth of goods and then sells that dollar's worth, he is said to turn over his money or stock. The old merchants turned their stock over two, three, four times a year. The chain store has changed all that. It will turn its stock over from ten to fifty times a year. This is one of the great achievements of the chain and one of the principal reasons for its low selling prices."(1)

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(1) John T. Flynn, Colliers, April 27, 1929.

"The chain store carries only a limited number of items of proved fast selling capacity, and all the knowledge gained in the operation of many stores is centered upon each store. Instead of the ruinous dead stocks of the independent retailer and the slow turnover, the chain store moves its stocks rapidly, and the wholesaling discount obtained by the chain store's central buying headquarters takes care of the warehousing of adequate stocks."(1)

"There are no duplication of brands, or varieties of qualities to choose from in a Woolworth Store, and very few in an A & P store. The customer can see at a glance what is offered and takes it or leaves it. Fewer clerks, therefore, can handle more business, and this saving can, in turn, be translated into lower prices."(2)

CHAIN STORES REDUCE THE ADVERTISING

The chain store is advertising now more than ever. It sells its goods through display which was found to be the easiest and least expensive of all types of advertising. Other forms practiced by the chain are handbills, window posters, bulletins and radio, but the display type overshadows all. This type has saved millions of dollars in advertising,

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(1) J. G. Frederick, Review of Reviews, 70:297, September, 1924.
(2) World's Work, 49:214, December, 1924.

which savings can be used for other useful purposes. It is really a saving for the public, for it enables goods to be sold at a low price.

"The distinctive store-front has saved the chains millions of dollars in advertising. They advertise themselves, and every store in a chain advertises all the rest. This idea is, of course, carried out in the window-display and in the interior arrangement of the store. This saving is translated into lower prices."(1)

Paul D. Converse says, "When there are several stores in one community, the chain store has an advantage, in that one advertisement applies to several stores."(2)

CHAIN STORES DO NOT PRACTICE UNFAIR AND HARMFUL PRICE CUTTING

The chain store does not, now, practice unfair and harmful price cutting, even though there were some occasions when this happened in the past. You can make a comparison of the prices of goods which are sold in chain and independent stores alike, and find that there is only a slight difference in the price. This is not unfair and harmful price cutting, and still it is the only way that prices differ between the two.

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(1) World's Work, 49:214, December, 1924.

(2) Paul D. Converse, Elements of Marketing, pp. 631-632.

In 1928, Godfrey Lebhar said that, the fact, that the grocery chains show a uniform net profit of about three per cent on their total sales, clearly shows that their offering of leaders is not excessive, while the fact, that they make no more than three per cent, demonstrates that the public is getting the benefit of their buying advantages and operating economies. There has always been a cry that the chain stores cut prices and ruined the small man by so doing, but if the business of the two is known, it is easily understood what the cause of failure has been, and it is not the chain store unfair tactics.

"Several nationally known chains have taken steps to stop the practice of price cutting simply by stopping it."(1)

"Nothing could be further from the truth than to say that chain stores sell popular brands at a loss."(2)

CHAIN STORES HAVE NOT DEALT A DEATH BLOW TO SMALL MERCHANTS

It is not the chain store that has put the small merchant out of business but the independent store itself. Competition and inefficient management have ruined many an independent.

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(1) Nation's Business, 1:40, February, 1930.

(2) Business Week, May 7, 1930, p. 15.

Paul Nystrom claims that seventy-five per cent of all business mortality is due to incompetence, inexperience and a lack of capital. The number of retailers failing each year is a measure of the business hazards, and it is interesting to know that thousands fail each year throughout the United States.

"The grocery chains, for example, will scarcely be able to capture more than 45 to 50 per cent of the market at the outside. The independent grocer provides a service in delivery and credit that appeals to the family of larger means, while at the other end of the scale there are many families who find it difficult to organize their incomes so as to buy wholly for cash."(1)

"The successful chain systems are a detriment only to the small merchants who are asleep. They hurt only stores whose owners are in a rut and who won't try to get out. Enterprising merchants welcome the advent of model, up-to-date stores of chain systems in their cities, for the chains are scientific merchandisers, and they bring new ideas, which the others can apply to their own enterprises."(2)

Retail trade is a risky undertaking. It is said, that ninety per cent of those who enter business for them-

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(1) World's Work, 55:85, January, 1929.
(2) Review of Reviews, 78:526, November, 1928.

selves do not last long, and eventually go into bankruptcy. The lowering of the retailing cost was necessary for the making of a normal profit. The chain, by its system of distribution and savings, has been able to reap a good profit, and likewise has been able to lower the prices to the customer. How can we find reason to tax such a system which is so considerate of, and so beneficial to, the consuming public?

THE CHAIN STORES HAVE A GOOD INFLUENCE ON A COMMUNITY AND DO NOT DRAIN IT OF RESOURCES

The chain store has a good influence on a community, for it gives good service, satisfies public wants, and helps to uplift the local community by leaving money in it. In the chain industry the greatest portion of the customer's money is spent in buying merchandise from local manufacturers and producers. Another portion goes for rent, light, heat, taxes, advertising, etc., which all remains in the local community. Some is also spent for the management of the store where local help is always employed.

"Chain stores send money out of town. Certainly they do, so that they may better serve the town. All stores, even the post office, telegraph office, insurance office, and the bank must necessarily keep money flowing out of town, and goods and services coming in. Prosperity is built upon

the increasing exchange of goods, services and money between towns and cities----and not solely upon interchange of products and services within the community. Examine the labels on your groceries, drugs, the name plates on your automobiles, the trade-marks on your furniture for a practical example of how dependent your town is upon others."(1)

"That the chains take money out of the community which would otherwise stay there is a contention which seems sound until one examines into what happens to a community's money. If we follow this line of reasoning to the ultimate, then the town that built a great wall about itself and allowed no people or goods to leave or to enter would be the most prosperous town. That, we know, is nonsense. Let us see what actually happens.

"A chain store deposits its local receipts in the local bank and of course sends the bulk of them by check to the head office. This it must do to discount its bills for merchandise. About 95½% of all the money received by a chain goes to buy merchandise, pay rents, clerk hire and the like. Only about 4½% is left for profit. As to expenses, the chain store and the independent store are quite alike. And also, they are quite alike as to paying for merchandise;

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(1) Chain Store Progress, May, 1930, p. 1

the independent store does not buy its goods locally. It, too, must send away the greater part of its receipts. The only difference is that the profits of the independent are in the local bank while the profits of the chain are in a distant bank. If the chain store extends, then a part of the profit comes back to pay for the extensions. If the independent has profits of any size, he invests them, and though he may invest them locally, he is more than likely to invest outside of his own locality in order to get the benefit of diversification. If he leaves the profits in the bank, then the bank may lend them to local borrowers, but in part the bank will certainly invest them in prime market paper and in bonds of corporations.

"In fact, any bank which invests too much of its resources in its locality is not in a condition to render the best service, for it runs the danger of becoming insolvent if the locality be visited by disaster. And now with the coming of chain banking, it would indeed be a wise man who would earmark money as to origin. And if the chain stores charge less for their goods than do the independents, then the chains leave in the community more money than they take away, for they leave with the consumers the surplus due to purchasing more for the same money."(1)

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(1) J. C. Penney, Saturday Evening Post, 202:145, February 22, 1930.

CHAIN STORES PAY ADEQUATE TAXES

The chain store cannot avoid paying taxes. It is subject to taxation just as any other class of merchants is. Due to the fact that the chain store rents buildings which are usually in choice locations, it indirectly pays higher taxes through its high rent schedule. On the other hand, if a chain owns its place of business, then naturally it must pay taxes by the direct method just as other merchants who own business property. The industry, furthermore, pays large amounts on income and through miscellaneous taxes. The comparative Federal Income Taxes paid by corporations and independents on a per store basis, for example, can be illustrated as follows:

Based on a $2,000 income the corporation pays $280 while the individual merchant pays nothing. Based on a $7,500 income the corporation pays $900 while the individual merchant, if he has a wife and children, pays $48. If he has neither wife nor children his income tax aggregates $70. Based on a $15,000 income, the corporation pays $1,800, while the individual merchant with wife and children pays $111. If he has neither wife nor children he pays $415 in taxes to the government.

Obviously, the corporation--on a per store basis--is a greater taxpayer than the thousands of individual

merchants with average incomes. Taxes, to the majority of companies, represent substantial expenditures. Consider, for example, the contributions of the First National Stores, Incorporated, a sectional chain grocery company operating 2,601 stores in New England. This company in 1931 alone expended more than $6,000,000 in taxes of all kinds. This sum is eight times more than the company's advertising budget and is the second largest item in its operating costs--labor alone exceeding it in size. Allocating this six million to each article that the First National Stores distribute, in proportion to its price in round figures, means that: 40¢ is added to each barrel of flour; 4¢ to each pound of tea; 2¢ to each pound of coffee; 2¢ to each pound of meat; 2¢ to each pound of butter; and a proportionate amount to every other item.

Safeway Stores, Incorporated, the leading grocery chain of the Pacific Coast, operating 2,691 stores, 1,631 meat markets, 44 warehouses, 15 bakeries and 2 creameries, remitted in 1930 the sum of $1,784,287 to federal and state authorities for taxes. 64% of the employees of this company personally paid taxes amounting to $409,858 or the equivalent of $43.36 per Safeway employee.

In Federal Taxes alone the Kroger Grocery and Baking Company pays thousands of dollars.

The chain store, we see, pays enough taxes. The more it will have to pay, the more burdensome will be the load, not on the chain store, but on the public, to whom the taxes will eventually be passed.

CHAPTER VI

CHAIN STORE TAXES AND THEIR CURRENT LEGAL STATUS

CHAIN STORE TAX MEASURES NO LONGER ON STATUTE BOOKS[1]

During 1933 there were two chain store tax laws voided. The state legislature erased one special chain store tax measure from its statute books, while the Supreme Court declared a second one unconstitutional. A third tax measure, Arizona's chain store tax law (a graduated license tax), was replaced by a two per cent gross sales tax.

In March, 1933, the Florida chain store tax law was declared to be unconstitutional by the Supreme Court of the United States, on the grounds that if allowed to remain and be enforced by the state, it would result in discrimination between companies operating in one country and companies operating in more than one country. The Florida tax law carried the provisions that: any person operating one or more retail stores, except filling stations selling gasoline and other petroleum products exclusively, shall with no exemption pay five dollars for one store; in any one county, from two to fifteen stores they shall pay ten dollars for each additional store, from fifteen to thirty stores there

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(1) National Chain Store Tax Problem, p. 1.

will be a tax of fifteen dollars, from thirty to fifty stores a tax of twenty dollars, from fifty to seventy-five stores a tax of thirty dollars, and over seventy-five stores there will be a tax of forty dollars for each additional store; in different counties, from two to fifteen stores require the payment of fifteen dollars for each additional store, from fifteen to thirty a tax of twenty dollars, from fifty to seventy-five a tax of forty dollars, while over seventy-five stores require a tax of fifty dollars; a tax of three dollars for every thousand dollars of stock carried in each state; if stores are operated in the same county, then application is made to the collector of that county, and a county license tax is imposed upon each store, provided such county taxes are graduated according to the number of stores situated in such counties; authority is vested in each incorporated municipality to levy a tax reaching twenty-five per cent of the state license tax, provided such municipal taxes are graduated according to the number of stores situated in respective municipalities.

This tax measure was brought into effect in 1931 and chain store companies in Florida immediately started action to bring about its repeal. The Liggett Company brought suit against the state tax commissioner in Florida but the Supreme Court declared this statute to be constitutional.

The chain store defenders brought the case to a higher court after its appeal from the decision of the lower court. Questions of law and economics and the deepest phases of the case were argued and passed on, but the Supreme Court of Florida upheld the decision of the lower court. Finally an appeal was made to the Supreme Court of the United States. The case was brought up and tried in 1933. This court did not uphold the former decisions but gave in March, 1933, a decision in favor of the chain stores, declaring this tax law unconstitutional because of county line discrimination.

There have been other chain store tax laws besides these which have been repealed in the past. The Mississippi and Georgia laws are among other enacted laws which singled out chain stores for special taxation. The old Mississippi law provided that upon every person, engaging or continuing within this State in the business of selling any tangible property whatsoever, real or personal, there is hereby levied and shall be collected a tax equivalent to one-fourth of one per cent of the gross income of the business. It also provided that if any person shall operate more than five stores in this state, at or by which any such property is sold, at retail, there is likewise levied on and shall be collected of such person, an additional tax equivalent to one-fourth of one per cent of the gross income of the business of all

such stores. The classification of wholesaler or jobber shall be used only by any person doing a regularly organized wholesaling or retailing business, known to the trade as such, and having regularly in his exclusive employment one or more travelling salesmen.

This old Mississippi law which levied a special tax upon chain stores was repealed by the state legislature in 1932, and enacted into law the highly successful two per cent gross sales tax. This tax law was not received favorably by the chain store companies in Mississippi because of its discriminating features. The case was brought before the United States District Court in 1930, but it was later appealed to the United States Supreme Court. The case was sent back again to the District Court for a decision on the merits.

After numerous hearings were conducted, the Court finally rendered its decision holding the chain store tax law of that state to be constitutional. Meanwhile, the existing sales tax law, with its discriminating features, was repealed and in its place was enacted a new measure providing for a sales tax of two per cent upon gross income or gross proceeds from sales. However, the chain store companies found that, while the new law erased from the statute books the provisions requiring a special tax from multi-unit

companies, it did not wipe out the liability of chain store companies for taxes during the two year period that it was in effect. In order to clear themselves of this liability, therefore, the chain stores appealed the law to the Supreme Court of the United States. It did no good, however. The companies decided finally to pay the tax and discontinue further legal action. The chains were also given the right to pay back taxes without interest.

In 1931 the old Georgia law was repealed. This law provided that persons operating a retail or wholesale chain of more than five stores, shall with no exemptions pay fifty dollars for each store over five stores. This law went out two years after its enactment in 1929.

EXISTING SPECIAL CHAIN STORE TAX LAWS(1)

In 1931 a chain store tax law was enacted in Alabama. A temporary restraining order against the enforcement of the law was issued to chain store interests operating in the state pending a trial on the merits. A date was set and the case came to trial in the Alabama lower court. The tax is currently being paid by all companies except those in favor of whom the restraining order was issued. The law provides that every person operating one or more stores,

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(1) National Chain Tax Problem, page 6.

retail or wholesale, except any business principally selling or distributing petroleum products, shall pay for one store a tax of one dollar, from two to five stores a tax of ten dollars for each additional store, on each store over five but not over ten a tax of fifteen dollars, on each store over ten but not over twenty a tax of twenty-five dollars, and a tax of seventy-five dollars on each store over twenty.

In Idaho, in March, 1933, a chain store tax law was enacted and took effect in May, 1933. This tax exempts gasoline filling stations and voluntary chains. Under the provisions of this tax all licenses expire December 31. Several affected companies are contemplating the battling of this tax law. The tax required under this law is as follows: one store, a tax of five dollars; two stores, ten dollars per store; three stores, twenty dollars per store; four stores, thirty-five dollars per store; five stores, fifty-five dollars per store; six stores, eighty dollars per store; seven stores, one hundred dollars per store; eight stores, one hundred forty dollars per store; nine stores, one hundred seventy dollars per store; ten stores, two hundred dollars per store; eleven stores, two hundred thirty dollars per store; twelve stores, two hundred sixty dollars per store; thirteen stores, two hundred ninety dollars per store; fourteen stores, three hundred dollars; fifteen

stores, three hundred fifty dollars per store; sixteen stores, three hundred eighty dollars per store; seventeen stores, four hundred ten dollars per store; eighteen stores, four hundred forty dollars per store; nineteen stores, four hundred seventy dollars per store; all over nineteen stores it is five hundred dollars per store.

In Indiana, the state legislature enacted a law in 1929 levying a graduated license tax on chain stores, with a twenty-five dollar maximum for all stores over twenty. The Standard Grocery Company and other chain store concerns appealed the law to the Federal Statutory Court of Indiana. The court declared the new tax measure unconstitutional. The state of Indiana then appealed the law to the Supreme Court of the United States which reversed the lower court's verdict and declared the measure valid. A plea by chain store interests to obtain a rehearing was denied. This measure was of major importance, not so much because of its cost to chain stores operating in Indiana, as because it established a precedent for the classification of multi-unit groups for special taxation based upon the same principle. The State fully expected that this new tax law would produce at least one million dollars in state revenue. It did not and much dissatisfaction resulted. Strenuous efforts were made in 1932 either to repeal it and enact a sales

tax, or to amend it sufficiently so that it would return a satisfactory income for the state treasury. In 1933, a new tax law was passed which has the tax scale as follows: one store, the tax is three dollars; from two to five stores, ten dollars per store; six to ten stores, twenty dollars per store; eleven to twenty stores, thirty dollars per store; all stores over twenty, one hundred dollars per store. This enacted law provided that it would be unlawful for any person, firm, corporation, co-partnership, association, either domestic or foreign, which owns, operates, maintains or controls any two or more stores, to reorganize the stores so owned, operated, maintained or controlled into small groups for the purpose of evading the payment of the tax imposed by the provisions of this act. Any person, firm, corporation, who should violate any of the provisions of this act, is to be fined in any sum not exceeding five hundred dollars, and each day of continued violation is to be deemed a separate and distinct offense.

In Louisiana, the tax law provided that those engaged in the operating or maintaining of two or more retail stores, or mercantile establishments in this state, shall, in addition to ad valorem taxes and licenses prescribed in the state's general license laws, and with persons or companies operating under a public utility franchise, and

gasoline filling stations, where the average daily stock of gasoline, motor oils or automobile accessories carried does not exceed fifteen hundred dollars, pay as follows: two to five stores, a tax of fifteen dollars each; five to ten stores, twenty-five dollars; ten to fifteen stores, thirty dollars each; fifteen to twenty stores, forty dollars each; twenty to twenty-five stores, fifty dollars each; twenty-five to thirty stores, sixty dollars each; thirty to thirty-five stores, seventy dollars each; thirty-five to forty stores, eighty dollars each; forty to forty-five stores, ninety dollars each; forty-five to fifty stores, one hundred dollars each; all stores over fifty, two hundred dollars each. This new law was enacted in 1932 and became effective in 1933.

In Maine a new chain tax measure was enacted and took effect in 1933. This law said that each and every license issued prior to the first day of January of any year, shall be charged for at the full rate, and each and every license issued on or after the first day of January of any year, shall be charged for at one-half of the full rate. This law exempts gasoline filling stations. The tax scale of this law is as follows: for one store, the tax is one dollar; for two to five stores, five dollars per store; six to ten stores, ten dollars per store; eleven to fifteen

stores, fifteen dollars per store; sixteen to twenty-five stores, twenty-five dollars per store; all stores over twenty-five, fifty dollars per store.

In Montana, the chain store tax law was approved and became effective in 1933. This law stated that every license issued prior to the first day of July of any year shall be charged at the full rate, and licenses issued on or after the first shall be charged at half the full rate. The term "store", as used in this law, means and includes any store or stores or any mercantile establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, co-partnership or association, either domestic or foreign, in which goods, wares or merchandise or petroleum products of any kind are sold either at retail or wholesale. The license fee scale is as follows: from one to two stores, two dollars and a half per store; three to four stores, fifteen dollars per store; five to six stores, twenty dollars per store; seven to ten stores, twenty-five dollars per store; all over ten stores, thirty dollars per store.

In South Carolina, the provisions of the new tax law are that each person operating one or more retail stores in incorporated cities or towns, except gasoline filling stations, shall, with no exemption, pay a flat rate as

follows: five dollars to fifty dollars for one to ten stores, increasing five dollars for each store; fifty to one hundred dollars for ten to twenty stores; one hundred dollars to one hundred fifty dollars for twenty to thirty stores; one hundred fifty dollars for each store over thirty.

There was a petition for a rehearing of the Indiana case by the United States Supreme Court at this time but it was denied. The chain stores of South Carolina were contemplating the bringing of action in their own case but then decided not to. In 1932, during February, in the lower court, the case was tried and the court sustained the constitutionality of the law.

In West Virginia, the tax required of every person, firm, corporation, associationor co-partnership opening, establishing, operating, maintaining one or more stores within this state under the same general management, supervision or ownership, is as follows: one store, the fee is two dollars; two to five stores, five dollars per store; six to ten stores, ten dollars per store; eleven to fifteen stores, twenty dollars per store; sixteen to twenty stores, thirty dollars per store; twenty-one to thirty stores, thirty-five dollars per store; thirty-one to fifty stores, one hundred dollars per store; fifty-one to seventy-five

stores, two hundred dollars per store; over seventy-five stores, two hundred fifty dollars per store. This tax measure excludes filling stations engaged exclusively in the sale of gasoline and other petroleum products. The law became effective in 1933.

In Wisconsin, any person operating two or more retail stores shall, with no exemptions, gasoline filling stations being exempted later, pay as follows: on each store over one but not over five, ten dollars; on each store over five but not over ten, twenty dollars; on each store over ten but not over twenty, thirty-five dollars; on each store over twenty, fifty dollars. This new tax measure was introduced, to last only for a temporary period of time. It was used solely as an emergency measure to raise revenue for the relief of the unemployed. This new law was to expire at the end of the year, 1933. The tax was paid under protest, since it had to be paid and could not be held back.

In North Carolina there was a flat fee license tax law in which every person operating two or more retail stores, except automobile and motorcycle dealers and service stations, shall, with no exemptions, pay fifty dollars for each store in excess of one. This measure was upheld by the North Carolina Supreme Court. The decision of this

court was later upheld in the decision handed down by the United States Supreme Court.

In Kentucky, retail merchants operating a store or stores, except farmers and sellers of farm products raised by them in Kentucky, with sales of gasoline and prescription whiskey deductible, and any corporation paying a special license, excise, occupational or corporation license tax permitted to deduct the amount so paid from the tax levied below, shall pay as follows: one-twentieth of one per cent of gross sales of four hundred thousand dollars or less; one-twentieth of one per cent of excess of gross sales over four hundred thousand dollars but not over five hundred thousand; five-twentieths of one per cent of excess of gross sales over five hundred thousand but not over six hundred thousand dollars; eight-twentieths of one per cent of excess of gross sales over six hundred thousand dollars but not over seven hundred thousand; eleven-twentieths of one per cent of excess of gross sales over seven hundred thousand dollars but not over eight hundred thousand; fourteen-twentieths of one per cent of excess of gross sales over eight hundred thousand dollars but not over nine hundred thousand; seventeen-twentieths of one per cent of excess of gross sales over nine hundred thousand dollars but not over one million; one per cent of excess of gross sales over one million dollars.

This graduated gross sales tax was levied in 1930. It was carried to the Kentucky State Court of Appeals, and this court handed down a decision declaring it constitutional. There was much disturbance about the entire situation and a way out was sought. An appeal was made to the Supreme Court of the United States. The Supreme Court passed on the case in 1932, and the court held that the decision of the lower court could not be sustained merely upon the face of the statute involved, in view of the allegations of the bills of complaint, that the only remedy provided is to obtain warrants upon the General Fund of the State in the hands of the State Treasurer, to be paid if and when funds are available for the payment of such warrants in the usual and orderly course; that there are now outstanding many such warrants in the hands of the State Treasurer, which have been outstanding since 1927 and cannot be collected by the owners or holders for lack of funds in the Treasury; and that there were at the time of the beginning of these suits outstanding warrants of great figures.

No findings upon the subject have been made by the courts. The decree was, therefore, reversed by the Supreme Court and the causes remanded to the District Court for final hearing upon the merits, without prejudice of the status of outstanding warrants upon the General Fund in the

State Treasury, and whether warrants of the sort contemplated by section ten of the act in question are accorded preference in payment over other warrants, and the basis, if any, for the assurance that such preference will be continued, so that in the event of actions by the plaintiffs at law under section ten, they would be afforded a certain, reasonably prompt and efficacious remedy.

In New Mexico, the new tax measure provided that retail dealers in merchandise other than liquor, oil, gas and motor fuel, peddlars, itinerant vendors and dealers in new and used automobiles, whose annual sales do not exceed three thousand dollars, shall pay a license tax of ten dollars. The tax scale is as follows: annual sales of three thousand dollars to ten thousand dollars, fifteen dollars annually; annual sales of eleven thousand to twenty thousand dollars, twenty dollars annually; annual sales of twenty-one thousand to fifty thousand dollars, fifty dollars annually; annual sales of fifty-one thousand to seventy-five thousand, seventy-five dollars annually; annual sales of seventy-six thousand to one hundred thousand dollars, one hundred twenty-five dollars annually; annual sales of one hundred one thousand dollars to one hundred fifty thousand, two hundred fifty dollars annually; annual sales of one hundred fifty-one thousand to two hundred thousand dollars, six

hundred fifty dollars; annual sales of two hundred thousand dollars to three hundred thousand, one thousand two hundred fifty dollars annually; annual sales of three hundred one thousand dollars to four hundred thousand, one thousand nine hundred fifty dollars; for all sales over four hundred thousand dollars, twenty-five dollars per thousand dollars. This new law was approved in 1933.

In Vermont, a graduated gross sales tax was levied in 1933. Its provisions are as follows: one-eighth of one per cent on the annual gross sales from fifty thousand to one hundred thousand dollars; one-fourth of one per cent on the annual gross sales from one hundred thousand to two hundred thousand dollars; one-half of one per cent on the annual gross sales from two hundred to five hundred thousand dollars; one per cent on the annual gross sales from five hundred thousand to seven hundred fifty thousand dollars; one and one-half per cent on the annual gross sales from seven hundred fifty thousand to one million dollars; two and one-half per cent on the annual gross sales from one million two hundred fifty thousand to one million five hundred thousand dollars; three and one-half per cent on the annual gross sales from one million seven hundred fifty thousand to two million dollars; four per cent on all annual sales over two million dollars.

CHAPTER VII

CITY ORDINANCES ENACTED LEVYING SPECIAL CHAIN STORE TAXES

BIRTH AND DEVELOPMENT OF THE ORDINANCE PROBLEM(1)

In addition to the tax danger confronting chain stores in the various General Assemblies, another tax problem manifested itself during 1932, in the form of city ordinances providing for the classification of multi-unit systems for special municipal taxation. The significance of the situation will be appreciated, when it is realized that there are a great many cities and towns which are already legally able to adopt such measures, and that several states have recently enacted special enabling acts to provide their cities and towns with such authority.

This new city ordinance form of chain store taxation began in Palatha, Florida and Portland, Oregon. The city council of Palatha introduced and passed an ordinance requiring all merchants to pay a two per cent gross sales tax. The individual retailers and chain store companies of the city succeeded in bringing about its defeat. The damage, however, had been done--a precedent for such taxation had been established. Within a short time Palm Beach,

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(1) National Chain Store Tax Problem, p. 19

Orlando and Jacksonville, Florida, were impressed with the possibilities of such taxes, and proposals to this end were presented for consideration of the respective city councils. Fortunately, however, no more of these Florida cities enacted ordinances.

Portland Enacts Graduated License Tax: During the fall of 1931, the city council of Portland, Oregon, passed an ordinance providing for the licensing of retail stores, starting at six dollars for the first store and progressing to fifty dollars for all stores over twenty. Those who felt this type of taxation to be fundamentally unsound, thereupon took advantage of the "Referendum provision" of the Oregon Constitution, and circulated a petition which was promptly signed by twenty-five thousand consumers, invoking the provisions for a popular referendum vote at the next general election.

Of the 105,653 votes cast by Portland voters at the election held in November, 1932, only 51,782 favored the repeal of the city ordinance. Thus the slim efforts to repeal this municipal law levying special taxes upon them were unsuccessful by the margin of 2,089 votes. The inference from this contest is, that such municipal licensing is by no means assured of unmixed popularity among local citizens and voters.

This new type of chain store tax problem soon spread to other sections of the country. Hamtramch, Michigan, a city of seven thousand inhabitants, passed an ordinance levying a graduated license tax on chain stores, with a maximum fee of one thousand dollars for all stores over three. Efforts to enact similar city ordinances were made in other mid-western cities such as Youngstown and Columbus, Ohio, and Milwaukee, Wisconsin. In St. Louis, Missouri, a chain store ordinance was enacted levying a graduated license tax, starting at twenty-five dollars for every store between two and five and progressing to two hundred fifty dollars for every unit over twenty-five. Maplewood, Missouri--a suburb of St. Louis--followed the lead of its parent, adding a city ordinance to its statutes classifying multi-unit systems for similar taxation.

Rahway and Newark, New Jersey; Charlotte and Durham, North Carolina; Pittsburg, Pennsylvania; Cleveland, Ohio; Syracuse, Binghamton and Rochester, New York; Freeport, Illinois; Los Angeles, California; Camden, Arkansas; in time sought to levy special city taxes on chain stores.

Durham, North Carolina, succeeded in enacting such an ordinance. Red Bank, New Jersey; Fredricksburg, Virginia; Knoxville, Tennessee; Capital Heights, Maryland; and Aberdeen, Washington; all passed measures requiring chain stores to pay special taxes.

THE TEN ENACTED CITY ORDINANCES TAXING CHAIN STORES(1)

Aberdeen, Washington:

This ordinance provided that each person, and every person, firm or corporation, operating and conducting a chain store in the city of Aberdeen, shall be required to pay an annual city tax of $100 per store. A chain store, for the purpose of this ordinance, shall be deemed to be a store owned and operated by a non-resident of the city, the owner thereof operating one or more units in addition thereto, outside the city of Aberdeen. The penalty of $100 is provided for each violation of the ordinance.

Capital Heights, Maryland:

This ordinance was passed in March, 1933, and singles out multi-unit systems for extraordinary taxation. The Capital Heights measure requires a flat $50 per store tax on all chain stores operating in the community.

Durham, North Carolina:

In 1932, the following city ordinance levying a special tax on chain stores was enacted:

> "License and Privilege Ordinance, Section 153: Branch or Chain Stores:
>
> Every person, firm or corporation, engaged in the business of operating or maintaining in

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(1) National Chain Store Tax Problem, p. 22

> the city of Durham, under the same general management, supervision or ownership, two or more stores or mercantile establishments where goods, wares or merchandise is sold for sale at retail, shall be deemed a branch or chain store operator, and shall pay for the privilege of engaging in such business on every store operated in the city of Durham in excess of one, an annual license tax of $50."

This ordinance is still in effect.

Fredricksburg, Virginia:

In November, 1932, the following resolution was adopted:

> "Resolved: That the Ordinance Committee request the City Attorney to draft an ordinance levying an annual license tax of $250 on each and every store, filling station, or branch of business, operated under the same name by chain stores, oil companies and all other chain organizations, which tax shall be supplemented and in addition to the regular merchant's license now imposed, provided that no further tax shall be imposed on chain organizations which operate in but one place of business within the city."

Hamtramch, Michigan:

The following ordinance was enacted in November, 1931:

> "An ordinance to provide for the operation, maintenance, opening or establishment of the business of selling food supplies and food products at retail within the city of Hamtramch, Wayne County, Michigan, and to provide for the licensing thereof; prescribing the license fee to be paid therefor; and providing a penalty for the violation of the terms of this ordinance."

The fee for one place of business is $25. For two places of business under the same general management, supervision, or ownership, it is $50 each. For three such places of business it is $75 each. For four such places of business it is $100 each.

Knoxville, Tennessee:

On September 20, 1932, an ordinance was enacted which provided for a special tax on the opening, maintaining or operating of a branch or chain store, at the rate of $25 per annum upon each store so operated in the city in excess of one. It further provided that the violation of said ordinance was a misdemeanor, and upon conviction, carried a fine of not less than $25, nor more than $25 per

day, for each and every day of its violation. Prior to the enactment of this particular ordinance, a tax law was drafted, levying a graduated license tax on chain stores, commencing at $50 for one store and progressing to $250 per store for all units over twenty. A $25 per unit fee was ultimately enacted into law.

Maplewood, Missouri:

In 1932 an ordinance was enacted providing for a special tax on chain stores. The first store was totally exempted. The second store had to pay a tax of three hundred dollars. The third store had to pay five hundred dollars. All stores over three had to pay one thousand dollars per store.

Portland, Oregon:

In September, 1931, Portland enacted an ordinance which provides as follows:

> "That from and after January first, 1932, it shall be unlawful for any person, firm, corporation, association or partnership, either foreign or domestic, to establish, open, maintain and/or operate through ownership, lease, general control, management, supervision, or otherwise, any store or stores within the city of Portland, without first having obtained a license as herein provided."

For one store the tax is six dollars. From one to five stores it is ten dollars per store. From six to ten stores it is fifteen dollars per store. From eleven to twenty stores it is twenty dollars per store. Over twenty stores it is fifty dollars per store.

Red Bank, New Jersey:

In December, 1931, an ordinance was enacted imposing license taxes on various occupations such as auctioneers, junk dealers, etc. Chain stores themselves were obliged to follow the following taxation:

> "Chain stores, where six or more stores are owned by one person, firm or corporation within and/or without the state of New Jersey, $50 per store annually."

St. Louis, Missouri:

In June, 1932, an ordinance was enacted which provided thus:

> "Every person, firm, corporation, co-partnership or association establishing, opening, maintaining or operating within this city under the same general management, supervision, ownership or control, two or more stores or mercantile establishments where any goods are offered for sale at retail, shall be deemed a branch or chain

> store operator and for such stores established, opened, maintained or operated in excess of one, shall pay the license fees hereinafter prescribed for the privilege of establishing, opening, maintaining, or operating such store or mercantile establishment in excess of one."

The tax scale was as follows: from two to five stores, twenty-five dollars per store; from six to ten stores, fifty dollars per store; from eleven to fifteen stores, one hundred dollars per store; from sixteen to twenty stores, one hundred fifty dollars per store; from twenty-one to twenty-five stores, two hundred dollars per store; over twenty-five stores, two hundred fifty dollars per store.

CHAPTER VIII

SUMMARY OF SALES, OCCUPATION AND GROSS INCOME TAXES

SALES TAXING PRIOR TO 1933[1]

As early as 1821, in Pennsylvania, a modified sales tax was in existence. In 1899, it was converted into the present Mercantile License Tax under which all vendors of goods and merchandise are taxed annually on the basis of one-tenth of one per cent of their gross sales.

"Connecticut, since 1921, has levied a privilege tax on unincorporated manufacturing and mercantile concerns of one-tenth of one per cent of their gross sales on their Connecticut business. An annual tax yield of about $600,000 in that state indicates its relative unimportance.

"Delaware levies a light tax on unincorporated merchants and manufacturers, who merely report to the county authorities the rough figures of their gross incomes. Wholesale and retail payments in the state have never exceeded $100,000.

"In Missouri, a state law permits cities to levy local retail sales taxes, and for several years both St. Louis and Kansas City have had a loosely administered local system at a one-tenth of one per cent rate."

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(1) National Chain Store Tax Problem, p. 30

West Virginia, since 1925, has obtained revenue from its tax on sales or turnovers thus: In this state--

(a) Such extractive industries as coal mining, oil and natural gas production, lumbering and mineral products are taxed at a rate of one to two per cent on sales.

(b) Manufacturers' intra-state sales, and all retailers' sales are assessed at approximately one-fifth of one per cent with wholesale transactions at a much smaller rate.

(c) Banks, transportation companies, pipe line operators, telephones, and other public service companies, are taxed at rates ranging from three-tenths of one per cent to one per cent.

(d) Contractors and professional men are taxed three-tenths of one per cent.

(e) Amusements bear a one per cent admittance tax.

In Mississippi, in 1925, a tax law was enacted under the stimulus of anti-chain store agitation, which levied a one-fourth of one per cent annual tax on all gross sales of all retail merchants, with an extra one-fourth of one per cent tax on the sales of all companies operating more than five stores in the state. Even with this added revenue, however, the state was unable to long postpone a fundamental revision of its tax base. The legislature adopted a bill for a general sales tax of two per cent, for a period of two years commencing April, 1932, to June 30, 1934.

The Mississippi Emergency Act of 1932 provides thus: Upon every person engaging or continuing within this state in the business of selling any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks) there is likewise hereby levied and shall be collected, a tax equivalent to two per cent of the gross proceeds of sales of the business; provided, however, that in the case of a wholesaler or jobber, the tax shall be equal to one-eighth of one per cent of the gross proceeds of sales of the business; provided further, that in the case of an automobile dealer or agent, the tax shall be equivalent to one per cent of the gross proceeds of sales of automobiles and/or tractors and trucks. The classification of wholesaler or jobber shall be used only by any person doing a regularly organized wholesale or jobbing business, known to the trade as such, selling only to licensed retail merchants or jobbers.

In 1932, in Pennsylvania, a temporary retail sales tax bill was introduced. It provides thus:

Section 3--Imposition and Rate of Tax. A state tax is hereby imposed and assessed upon sales of tangible personal property, at the rate of one per centum upon each dollar of the gross income derived from the sales of such property, during the six months period ending February twenty-eighth,

one thousand nine hundred thirty-three, or any part of such period, except such sales of tangible personal property as are not within the taxing power of this Commonwealth under the Commerce Clause of the Constitution of the United States. Such tax shall be paid at the time and in the manner hereinafter provided.

In 1933, however, the following Pamphlet Law Resolution was passed:

Whereas, the act of August 19, 1932, P.L. 92, imposing an emergency sales tax provided for the filing of returns and payment of such tax on or before April 1, 1933;

Whereas, legislation is pending providing for payment of only one-half of said tax on or before April 1, 1933, concurrently with the filing of said report and the remaining one-half on or before May 15, and;

Whereas, said legislation cannot be adopted before April 1, and many taxpayers are uncertain as to what steps are to be taken with respect to the filing of returns and payment of said tax, therefore,--

Be it resolved if the House of Representatives concur:

That every vendor liable for the payment of the Emergency Sales Tax under the provisions of the Act of August 19, 1932, P. L. 92, entitled "An act to provide revenue by imposing an emergency sales tax for state purposes upon sales

of tangible personal property by vendors as herein defined, prescribing the method and manner of collecting such tax and providing penalties," may on or before April 1, 1933, pay one-half of such tax concurrently with the filing of his report, and may pay the remaining one-half of said tax in a single installment on or before the fifteenth day of May, 1933, but the amount of the tax not paid on or before April 1, 1933, shall bear interest at the rate of six per cent per annum until May fifteenth, 1933, and twelve per cent per annum thereafter.

Resolved, That the General Assembly hereby declares its purpose forthwith to enact suitable legislation more fully to effectuate this resolution, and to authorize the Department of Revenue to accept payment, and to settle said Emergency Sales Tax in accordance with this resolution.

Resolved, That this resolution shall be effective immediately upon its approval by the Governor.

Approved, March 29, 1933.

THE EIGHT SALES TAX LAWS ENACTED DURING 1933 (1)

I. In Arizona, on March 20, 1933, a two per cent tax on gross income was levied. The provisions of the new law, as concerns retailing, are in substance as follows: From

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(1) National Chain Store Tax Problem, p. 35

and after April 30, 1933, there is hereby levied and shall be collected, annual privilege taxes measured by the amount or volume of business done against the persons, on account of the business activities and in the amounts to be determined by the application of rates against values or gross income, or gross proceeds of sales, as the case may be, as follows:

Section 2-C-------Upon every person engaging or continuing in this state in the business of selling any tangible personal property whatsoever, (not including, however, bonds or other evidence of indebtedness or stocks) there is likewise hereby levied and shall be collected, a tax equivalent to two per cent of the gross proceeds of sales of the business; provided, however, that in the case of a wholesaler or jobber, the tax shall be equal to one-half of one per cent of the gross proceeds or sales of the business. The classification of wholesaler or jobber shall be used only by any person doing a regularly organized wholesale or jobbing business, known to the trade as such.

Provided, however, that any person engaging or continuing in business as a retailer, and a wholesaler or jobber, shall pay the tax required on the gross proceeds of sales of each such business at the rates specified, when his books are kept so as to show separately the gross proceeds of sales

of each business, and when his books are not so kept he shall pay the tax as a retailer.

II. In Indiana, on February 27, 1933, a bill was approved which levies a one per cent tax on the gross income of all retailers. Section 2--------There is hereby imposed a tax measured by the amount or volume of gross income, and in the amount to be determined by the application of rates on such gross income as hereinafter provided. Such tax shall be levied upon the entire gross income of all residents of the State of Indiana and upon the gross income derived within the State of Indiana of all persons and/or companies, including banks, who are not residents of the State of Indiana, but are engaged in business in this state, or who derive gross income from sources within this state, and shall be in addition to all other taxes now or hereafter imposed with respect to particular occupations and/or activities. Said tax shall apply to, and shall be levied and collected upon, all gross incomes received on or after the first day of May, 1933, with such exceptions and limitations as hereinafter provided.

Section 3-------The tax hereby provided for shall be imposed at the following rates: Upon the entire gross income of every person engaged in the business of retailing of any tangible commodity, or commodities--one per cent.

III. In Illinois, March, 1933, a bill was approved which contained the following provisions:

A tax is imposed upon persons engaged in the business of selling tangible personal property at retail in this state, at the rate of three per cent of the gross cash receipts from such sales in this state of tangible personal property, made in the course of such business on and after the first day of the next calendar month after the taking effect of this Act (April 1, 1933), and prior to July 1, 1935. However, such tax is not imposed upon the privilege of engaging in any business in interstate commerce or otherwise which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

IV. In North Dakota, March, 1933, a bill was approved which levies a tax on gross income as follows:

Section 3----A state tax is hereby imposed and assessed upon sales of tangible property, and upon sales of professional services, at the rate of 2% of the gross income derived from the sales of such property or services during the period of the taking effect of this Act (July 1, 1933), and ending June 30, 1935, or any part of such period, except such sales of tangible personal property as are made to the United States Government under the Commerce Clause of the Constitution of

the United States, and such sales as are made to the state of North Dakota including its departments, institutions and industries.

V. In Oregon, March, 1933, a bill was approved by the governor which levied a tax on gross income as follows:

Section 2----From and after the effective date of this act (August 1, 1933), there hereby is imposed upon every person engaging or continuing in business in this state, a privilege tax measured by two per cent of the gross income as herein defined; provided, however, that in the case of gross income derived from the sale of tangible personal property or service to dealers for resale and gross income derived from publishing, the tax shall be measured at the rate of three and one-tenth of one per cent of such gross income.

VI. In South Dakota, March, 1933, the governor approved the bill which provides:

"Upon every person(1), located in, or engaging or continuing in any occupation, trade, profession, within this

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(1) The term person means an individual, a natural person, a trust or estate, any co-partnership, firm, corporation, joint adventure, association, fiduciary, or other entity however composed, any corporation or combination acting as a unit, and the plural as well as the singular number.

state other than those businesses included in the four preceding subdivisions of this section, the amount of the tax levied and imposed by this act shall be equal to the gross income of such person multiplied by a rate of one per cent, excepting that the distributed share of the income of a co-partnership, firm or joint-adventure upon which the tax has been paid coming to the individual member of such organization, shall be taxable only at a rate which shall be equal to the difference between the rate of tax paid by such co-partnership, firm or joint-adventure and the rate of one per cent." Effective July 1, 1933.

VII. In Utah, March, 1933, the bill was passed which provided as follows:

From and after May 31, 1933, there is hereby levied and there shall be collected and paid:

(a) a tax upon every retail sale made within the State of Utah equivalent to three-fourths of one per cent of the purchase price paid or charged, or in the case of retail sales involving the exchange of property, equivalent to three-fourths of one per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except that in the case of sales of liquid malt, malt syrup or malt extract, fluid, solid, or condensed, made from malted serial grains

in whole or in part, this tax shall be equivalent to five per cent of the purchase price;

(b) a tax equivalent to three-fourths of one per cent of the amount paid for all services rendered, or commodities furnished for domestic or commercial consumption by any utility of the State of Utah;

(c) a tax of three-fourths of one per cent of the amount paid for all meals furnished at any restaurant, eating house, hotel, drug store or other place at which meals are regularly served to the public;

(d) a tax of three-fourths of one per cent of the amount paid for admission to any place of amusement, entertainment or recreation, provided that the tax on any admission to any theatrical entertainment shall be not less than one cent on each admission.

VIII. In Washington, March, 1933, the new tax law was passed which provides:

From and after the first day of June, 1933, and until the first day of June, 1935, there is hereby levied and shall be collected from every person an annual tax or excise for the privilege of engaging in business activities. Such tax or excise shall be measured by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, as follows:

Upon every person engaging or continuing within this state in the business of selling at retail, or other than as a wholesaler or jobber, any tangible property whatever, real or personal (except, however, bonds or other evidences of indebtedness or stocks); as to such persons the amount of the tax or excise shall be equal to the gross proceeds of sales of the business, multiplied by the rate of five-tenths of one per cent.

[illegible] or in party, [illegible] be equivalent for five per cent of the purchase price;

(b) a tax equivalent to three-fourths of one per cent of the amount paid for all service rendered, or commodities furnished for domestic or commercial consumption by any utility of the State of [illegible];

(c) a tax of three-fourths of one per cent of the amount paid for all meals furnished at any restaurant, eating house, hotel, drug store or other place at which meals are regularly served to the public;

(d) a tax of three-fourths of one per cent of the amount paid for admission to any place of amusement, entertainment or recreation, provided that the tax on any admission to any theatrical entertainment shall be not less than one cent on each admission.

VIII. In Washington, [illegible] 1935, the same tax law was passed which provides:

From and after the first day of [illegible], 1935, and until the first day of June, 1937, there is hereby levied and shall be collected from every person an annual tax or excise for the privilege of engaging in business activities. Such tax or excise shall be measured by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, as follows:

CHAPTER IX

THE CHAIN STORE LEGISLATIVE PROBLEM DURING 1933

LEGISLATURES WHICH CONVENED IN REGULAR SESSION IN 1933[1]

In the year nineteen-thirty-three, there were one hundred forty-one bills introduced by Congress seeking to classify chain stores for extraordinary taxation. New special tax laws were enacted in Idaho, Indiana, Maine, Montana, New Mexico, Vermont and West Virginia. Forty-one governing bodies sat during the regular sessions.

CHAIN STORE BILLS INTRODUCED ACCORDING TO WEEKS[2]

In the first month or first four weeks there were forty-one house bills introduced and seven senate bills. During the next four weeks there were thirty-nine house bills and eighteen senate bills introduced. There were introduced during the last five weeks sixteen house bills and six senate bills. So, during the thirteen weeks after the legislature opened, in nineteen-thirty-three, there was a total of one hundred forty-one bills introduced.

BILLS INTRODUCED BY STATES[3]

There were one hundred forty-one bills introduced in forty-one states. These one hundred forty-one bills vary

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(1) National Chain Store Tax Problem, p. 43
(2) Ibid, p. 43
(3) Ibid, p. 44

in their provisions. Most of them provide for graduated license taxes on multi-units. Others are graduated gross sales taxes, measures vesting authority in municipalities to classify, license and regulate multi-unit systems, or bills carrying other ways and means of levying special taxes on chain stores.

The states which introduced one bill are Rhode Island, Tennessee, Vermont, Wyoming, North Carolina, Arizona, Georgia. The states introducing two bills are Delaware, Georgia, Massachusetts, New Jersey, Montana, Nebraska, North Dakota, Oregon and South Dakota. Washington, South Carolina, Arkansas, Ohio, New Mexico, Colorado, New Hampshire, Missouri and Michigan introduced three bills. Utah, Kansas, Oklahoma, Connecticut, Indiana, Iowa, Kansas and Maryland introduced four bills. The states which introduced five bills are California, Illinois, Maine and Wisconsin. West Virginia alone introduced six bills, while Pennsylvania introduced seven. Minnesota and New York, far in advance of the other states, introduced thirteen bills each.

BILLS INTRODUCED ACCORDING TO PROVISIONS(1)

One hundred and five bills provided for graduated license taxes. Only four provided for graduated gross sales

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(1) National Chain Store Tax Problem, p. 46

taxes. Special graduated gross sales taxes were had in eight bills introduced in the house and in the senate. Municipal Authorization was the provision in a total of nine bills. Fifteen bills had a miscellaneous provision.

GRADUATED LICENSE TAX BILLS ACCORDING TO TAX SCALE

Eleven bills provided for a maximum fee of twenty-five dollars. Eight bills provided for a maximum fee up to fifty dollars. Up to seventy-five dollars there was a total of only three bills. Fourteen bills provided for a maximum fee up to one hundred dollars. Up to two hundred dollars there were seventeen bills. Nineteen bills provided for a maximum fee up to five hundred dollars. Up to one thousand dollars there were eleven bills. Five other bills provided for a maximum fee of five thousand dollars.

MISCELLANEOUS TAXES(1)

In North Carolina there was the Merchants License Tax. Wholesale and retail merchants for the privilege of operating, etc., a store or stores, shall, in addition to the license tax, pay a tax at the following rates for half-yearly periods, deducting worthless accounts from the amount of gross sales.

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(1) National Chain Store Tax Problem, p. 46

In Tennessee there was the Merchants Privilege Tax. Each person, etc., engaged in the mercantile business and those owning chain stores and operating in addition thereto depots or distributing houses shall, with no exemptions, pay 15¢ on each $100 of average capital invested.

In Virginia there was a Distributing House License Tax. Any person, etc., operating, etc., a distributing house to distribute goods among his retail stores shall, with no exemptions, pay the following taxes: For $1,000 or less, a $10 tax. For $1,000 to $2,000 in purchases, a $20 tax. For $2,000 to $100,000--(a) $20 for first $2,000 and (b) 20¢ on each $100 on the excess from $2,000 to $100,000.

In Maryland there was a graduated license tax on chain stores starting at $5 per store, for stores one to five, and progressing to $150 per store for all stores over twenty. This law became effective June 1, 1933.

In Minnesota the law provided for both a graduated license tax and a graduated gross sales tax. The graduated license tax commenced at $5 per store for one to ten units, advancing to $155 per store for all units over fifty. The graduated gross sales tax started at one-twentieth of one per cent for annual sales of $100,000 or less, increasing to a flat one per cent for annual sales over one million dollars. Effective 1933.

In North Carolina, there was a graduated license tax starting at $50 per store for stores two to five, progressing to $150 per store for all stores over fifty-one. It voided the existing law requiring a flat tax of $50 per store for all units over two, and became effective June, 1933.

BIRD'S EYE ANALYSIS OF ANTI-CHAIN STORE LEGISLATION(1)

In about thirty-eight states in the Union, bills for taxation of chain stores were proposed. These bills were brought up in the House of Representatives and were all graduated license taxes. The provision in each bill ranged anywhere from one dollar per store to five hundred dollars over twenty stores.

In the Senate, in about twenty-one states, bills were introduced with provisions anywhere from one dollar for one store to one thousand dollars over twenty stores.

In California a graduated gross sales tax bill was brought up in the House of Representatives, while in Minnesota and Ohio, like bills were introduced in the Senate.

Special graduated gross sales tax bills were introduced in Montana, New Mexico, Iowa, Vermont, California, Georgia and New Hampshire.

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(1) National Chain Store Tax Problem, p. 47

In Kansas, Missouri, New Mexico, Oregon, Alabama, Utah and Arkansas, bills were introduced providing authority to cities to license retailers.

In Connecticut, Maine, Indiana, Minnesota, Kansas, Maryland, Michigan, South Carolina, Texas, West Virginia, and New York, there are all different forms of tax bills. They are mainly composed of graduated license taxes, graduated gross sales taxes and tax bills with different provisions than the common bills. Miscellaneous tax bills are all provided in these different states.

COURT CASES--CHAIN LEGISLATION

During the last ten years, in this country, there has been a large number of court cases which tested whether chain store legislation has been constitutional or not. The decisions have depended not only upon the varying facts which constituted the background for the particular legislation under consideration, but also, to some extent, upon the point of view of the courts or judges who have been called upon to deal with the question. A study of some of these cases will give one an understanding of how perplexing and complicated is the problem of chain store taxation. The following cases are just a few of those that have been brought before the courts in recent years.

In Quaker City Cab Co. v. Penna., 277 U.S. 389, the court held invalid a Pennsylvania statute which imposed a tax upon the gross receipts of a corporation engaged in the general taxicab business, but not upon like receipts of individuals and partnerships engaged in the same business. The differences relied upon as justifying the tax are fairly comparable with those relied upon in the present case. It was said that there were advantages peculiar to the corporate organization not enjoyed by individuals or partnerships, such as those pointed out in other cases. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. These advantages, although brought to the attention of the court, were not considered as constituting differences having a reasonable relation to the object of the taxing act, and the tax was held unconstitutional as denying to the corporation the equal protection of the laws.

American Sugar Refining Co. v. Louisiana, 179 U.S. 89, involved the validity of a license tax upon those carrying

on the business of refining sugar and molasses, but exempted planters and farmers grinding and refining their own sugar and molasses. The classification was upheld on the ground, that the steps taken by planters and farmers to protect their product for the market were incident to the original growth of the cane; and that this distinction saved the classification from being purely arbitrary, oppressive or capricious.

In W. W. Cargill Co. v. Minnesota, 180 U.S. 452, the statute required that the owner of an elevator or warehouse situated on the right of way of a railroad, etc., should procure a license therefor at a nominal fee. The act was assailed because it did not apply to elevators and warehouses not so situated. The court sustained the classification because the railroad was a public highway, the use of which could be so regulated as to promote the ends for which the corporation was created, and thus subserve the interests of the general public. Moreover, it was neither alleged nor proved in that case, that there were in the state any elevators or warehouses not situated upon a railroad right of way.

In Wong Wing v. Kirkendall, 223 U.S. 59, the statute involved imposed a license fee on hand laundries, but not upon steam laundries, and exempted from its operation

laundries not employing more than two women. The classification was sustained, principally upon the authority of the two cases referred to immediately above.

In Metropolis Theatre Co. v. Chicago, 228 U.S. 61, a classification of theatres for license fees, graded according to the prices of admission, was held not to be arbitrary or unreasonable, because, although there might be exceptional cases, there was a natural relation between the price of admission and revenue.

While opinions might differ in respect of the wisdom or fairness of some of the statutes involved, as, for example, the laundry tax statute which taxed the small laundry and exempted the large steam laundry, the differences were germane to the object, and sufficiently substantial, to save the classification in each case from being condemned as purely arbitrary or capricious.

In Armour & Co. v. Virginia, 246 U.S. 1, the statute under attack laid a tax on merchants doing business in the State, based on the amount of their purchases during the license period, including as purchases all goods and merchandise manufactured by the licensee, and sold or offered for sale in the State. It excluded from its operation domestic manufacturers, taxed on capital, who offered for sale at the place of manufacture, goods and merchandise

manufactured by them. It applied alike to citizens and residents of Virginia, and non-citizens and non-residents who manufactured in Virginia. The state supreme court held that it applied to Armour and Company who manufactured part of their products outside of the State and sold them within it. The Court said:

"In the first place, we are of opinion, that the distinction upon which the classification in the statute rests between a manufacturer selling goods by him made at their place of manufacture, and one engaged as a merchant in whole or in part in selling goods of his manufacture, at a place of business other than where they were made, is so obvious as to require nothing but a mere statement of the two classes. All questions concerning the equal protection clause of the Fourteenth Amendment may therefore be put out of view."

In Rust v. Van Deman, supra, a statute placing taxes additional to the usual occupations taxes on persons who offered, with merchandise bargained or sold in the course of trade, coupons, profit-sharing certificates, or the like, was attacked as being arbitrary and unreasonable, in that the only difference between the other merchants and those who used trading stamps was a difference in the method of advertising. The Court said, however: "The difference between a business where coupons are used, even regarding

their use as a means of advertising, and a business where they are not used, is pronounced. Complainants are at pains to display it. The legislation which regards the difference is not arbitrary within the rulings of the cases. It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it."

In Singer Sewing Machine Co., v. Brickell, 233 U.S. 304, there was drawn in question a statute of Alabama which provided that every person, firm or corporation, selling or delivering sewing machines in person or through agents, should pay a tax of fifty dollars annually for each county in which they might sell or deliver said articles; and for each wagon and team used in delivering or displaying the same, an additional sum in each county of twenty-five dollars annually. It exempted merchants selling sewing machines at their regularly established places of business. The Singer Company, a foreign corporation, was engaged in many counties in the State in selling and renting sewing machines, in part from regularly established places of business, and in part by means of wagons going from place to place in counties where its stores were located. It attacked the statute on the ground that it involved an arbitrary discrimination between merchants selling at their

stores and merchants selling by means of wagons. It was shown that the merchants who sold at their stores, usually delivered the articles sold by wagon. The court sustained the tax, saying with respect to the two kinds of business: "But there is an evident difference, in the mode of doing business, between the local tradesman and the itinerant dealer, and we are unable to say that the distinction made between them for purposes of taxation is arbitrarily made. In such matters the States necessarily enjoy a wide range of discretion, and it would require a clear case to justify the courts in striking down a law that is uniformly applicable to all persons pursuing a given occupation, on the ground that persons engaged in other occupations more or less like it ought to be similarly taxed."

In Armour Packing Company v. Lacy, 200 U.S. 226, a North Carolina statute imposed an occupation tax upon every meat packing house doing business in that State. The Armour Company, which was taxed under this statute, had its packing house at Kansas City, and shipped its packed products to various depots in the state, where they were sold and delivered in competition with wholesalers and commission merchants who were not required to pay the tax. The statute was sustained.

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In Bradley v. Richmond, 227 U.S. 477, an ordinance imposed a tax on the conduct of various businesses, and gave a power of classification to a committee of the council. That committee classified private bankers, placing a tax of one amount on certain of them and of a different amount on others. It appeared that the business of those in the one class was that of lending money at high rates upon salaries and household furniture, while that done by the other class was that of lending money upon commercial securities. The classification was held not to offend the constitutional provision for equal protection of the laws.

The Indiana tax case is one of the most important in discussions of chain stores. In 1930, the Federal District Court for the Southern District of Indiana held the Indiana law invalid, and an appeal from that decision was taken to the Supreme Court of the United States. The Supreme Court then reversed the decision and declared the Indiana tax law to be constitutional.

The question of the advantages of the chain store is an important point in this case. Mr. Justice Sutherland says, in regard to this, "Every advantage that I have spoken of as relating to the chain group is that which inheres, primarily, in volume and management without respect to whether it is involved in a chain group or in a single store.

Good management makes for volume, and volume makes for the possibility of making or acquiring more capital, and more capital makes for the possibility of employing the highest grade of experts, so that there is constant intercommunication or revolving. I would find the same advantage adhering in a large department store over a small one. Every quality that I have enumerated as going to the manner of organization relates itself, primarily, to there being a sufficient capital structure and volume of business to permit it to be carried on and I would add management in that it is an essential part of it."

While cases of this kind have done much in determining the status of the chain store, the Federal Trade Commission has also done a great deal. It has made investigations regularly of the practices of the chain and of the results of its operations. The latest Federal Trade investigation was made recently, and, as it has always done in past years, reported in favor of the chain store.

CHAPTER X

CONCLUSION

LATEST FEDERAL TRADE COMMISSION REPORT

The full release of the Federal Trade Commission Report to the United States Senate on the subject of its long inquiry into the chain store, reveals some interesting facts to the advantage of this form of retail distribution. The investigation was started at the outset of the Hoover administration and in a most exhaustive manner has gone into the business. Some of the highlights of the report are:

In the first instance, the commission ruled that there is no indication that the acquisitions and consolidations among chain stores come within the prohibition of Section 7 of the Clayton Act. It is especially true of grocery groups where competition has been actively maintained, and no unlawful monopoly can be said to exist under the present status of the Sherman Anti-Trust Act.

Secondly, consolidations and combinations of chain store groups as they have been conducted, appear not to be susceptible of any great degree of regulation, on the basis of the present Federal Trade Commission act or the anti-trust laws, since the courts have not interpreted these acts

to include the prohibition of the purchase of assets of one company by another in contradistinction to the purchase of a stock interest.

Thirdly, the legislation, if any, which should be enacted for the purpose of regulating and controlling chain store distribution, will depend largely on the policy which the federal government considers desirable in view of all the facts.

The commission further took up phases which demonstrate certain advantages to the public of the chain store method of distribution.

The charge that chain operators demand and receive brokerage payments, which are opposed by manufacturers on the ground that buyers are trying to obtain compensation for services not performed, is answered by the statement--"on the other hand it might be said that (for the manufacturers) to include brokerage in the price where the buyer does his own brokerage is likewise obtaining remuneration for services which are not performed."

In answer to the charge that chain stores obtain special sized packages from manufacturers which tend to deceive the public, the commission found that in many cases the difference in sizes of the packages was caused by the fact, that there is a more rapid turnover in chains, and that

these stores get and distribute a new sized package much more quickly than independents.

The commission set forth "that on the average, the chain stores can and do sell at prices which are somewhat lower than the prices charged by independent retailers or even cooperative chains." Figures illustrating this were presented, showing that prices in chain grocery stores were discovered to be from four per cent to fourteen per cent lower than in other grocery stores.

In its final recommendations to the Senate, the Federal Trade Commission will deal with the matter of legislative regulation of chain stores, but indicates that if such regulation be along the lines of state activities, namely,that of taxation control, certain advantages of chain store operations might be lost. It was set forth that under this there would be a substantial addition to the cost of living; that people who wish to save by the cash and carry method would lose that advantage, and the savings of such a system would be frustrated.

The marked growth of the chain store system in the last ten years has brought with it increasing attention to trends and to the problem of control. Does the chain store deal a death blow to small merchants? Does it have a bad influence on a community? Does it have bad trade

practices? Does it dodge a just share of the taxes? Does it demoralize manufacturers' business? Does it have monopolistic tendencies? These are some of the questions which are answered in this thesis.

In the beginning of my thesis, I gave the history of chain store taxation in the different states in the country. I showed how there were enemies and defenders of the chain store, and how the enemies wished to rout it and the defenders to preserve its life. This was done by bringing forth the various arguments on both sides of the question, and was supported by a vast amount of weighty authority.

Following these arguments, I gave a history of the different tax measures that were proposed and introduced, some of which were levied in the different states. This tax picture clarifies the arguments preceding it and shows a good insight to the problem of chain taxation.

Then I proceeded to state a few cases on taxation which were brought up in the different courts of the United States, which showed the difficulty of taxing the chain industry. Finally I brought about the latest Federal Trade Commission Report which took a stand in favor of the chain stores, so that for the time being the chain stores in most sections are free from the worry of being taxed.

Shall we tax the chain store, or shall we not tax it? Your conclusion may be drawn from the study of the preceding pages.

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